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Legal aspects of marine environment protection and oil pollution control in the Arabian Gulf region

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MALMO - SWEDEN

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by

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A paper submitted to the World Maritime University as part of the requirements of the Course on General Maritime Administration.

The contents of this paper reflect my own personal views and are not necessarily endorsed by the World Maritime University or the International Maritime Organization.

Signature _____

Date 10th June 1985

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C O N T E N T S

A C K N O W L E D G E M E N T

The last four decades have shown an increasing interest in water ways. At the same time, the Arabian Gulf area has become one of the most vulnerable and crowded area with vessels of all kinds playing its water, while the law of the sea has revealed that there is a need for more research. This has been my interest since I became one of the Pioneer Students of the World Maritime University.

Now when I have managed to fullfil a part of my ambition to study the legal aspects of marine pollution in the Arabian Gulf region, I have to show my gratitude to my supervising professor Gunnar Stubberud, who encouraged me to work on this sensitive subject, and his constructive criticisms were of the utmost importance and contributed greatly to this study. Professor Edgar Gold has been a great help, especially by allowing me to use his references.

I am grateful to the Arab Maritime Transport Academy in Sharjah, especially the Director General Captain Al-Diwani, who has shown a great interest in my work. The experience working there is a challenge one and without their interest and their financial support, I would not have reached this part of the world.

My thanks to my colleaque Mr.Al-Mazeedi are due for an excellent translation of part of this study, my best friend Mr.Ebrahim Taha who helped me with some references and who took the responsibility to get type the manuscript with the help of Mr. M.Iqbal Niazi.

Some names that should be mentioned, but for one reason or another have slepped my mind, to them my opologies are due.

Finally, an acknowledgement that is necessary but could never be sufficient to my wife Mariam who has been the best help one could ever have wished for.

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LIST OF MAPS, TABLES AND CHARTS

M A P S

T A B L E S

C H A R T S

ABBREVIATIONS

CBT	-	Dedicated Clean Ballast Tank.
CLC	-	Civil Liability Convention, 1969
COW	-	Crude Oil Washing System.
CRISTAL	-	The contract regarding an Interim settlement of Tanker Liability for Oil Pollution.
ECOSOC	-	Economic and Social Council of the United Nations.
EEC	-	European Economic Community
EEZ	-	Exclusive Economic Zone
EFZ	-	Exclusive Fishing Zone.
GCC	-	Gulf Co-operation Council.
GESAMP	-	The Joint Group of Experts on the Scientific Aspects of Marine Pollution.
IGS	-	Inert Gas Sysem.
IMCO	-	Inter-governmental Maritime Consultative Organization.
IMF	-	International Monetary Fund.
IMO	-	International Maritime Organization.
INTERTANKO	-	The International Association of Independent Tanker Owner.
IOOC	-	Iranian Offshore Oil Company.
IOPC	-	International Oil Pollution Compensation Fund
IOPP	-	International Oil Pollution Prevention Certificate.
ITIA	-	International Tanker Idemnity Association.
LOSC	-	United Nations Convention on the Law of the Sea 1982.

LOT	-	Load on Top.
MARPOL	-	International Convention for the Prevention of Pollution from Ships, 1973.
MEMAC	-	Marine Emergency Mutual Aid Centre.
MEPC	-	Marine Environment Protection Committee (IMO)
MSC	-	Maritime Safety Committee (IMO)
OCIMF	-	Oil Companies International Maritime Forum.
OECD	-	Organization for Economic Co-operation and Development.
OILPOL	-	International Convention for the Prevention of Pollution of the Sea by Oil, 1954.
OPEC	-	Organization of Petroleum Exporting Countries
PL	-	Protectively Located.
ROPME	-	Regional Organization for the Protection of Marine Environment.
SBT	-	Segregated Ballast Tanks.
SDR	-	Special Drawing Right.
SOLAS	-	Safety of Life at Sea (Convention)
STCW	-	Convention on Standards of Training Certification and Watchkeeping for Seafarers, 1978.
TCC	-	Technical Co-operation Committee (IMO)
TSPP	-	International Conference on Tanker Safety and Pollution Prevention, 1978.
TOVALOP	-	Tanker Owners' Voluntary Agreement on Liability for Oil Pollution.
UAE	-	United Arab Emirates.
UN	-	United Nations.

UNCLOS III - Third United Nations Conference on the Law of the Sea.

UNEP - United Nations Environment Programme.

UNDP - United Nations Development Programme.

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I N T R O D U C T I O N

This study principally aims at focussing some light on the legal aspects of marine environment protection and pollution prevention in the Arabian Gulf region, through following up and analysing the legal developments on the national and regional levels and the steps taken towards supporting and strengthening regional co-operation therein. Naturally the aforesaid developments are not in isolation from what happens in the international arena, accordingly, the analysis of environmental laws in the relevant states can not but be made on the basis of the international conventions relating to the protection of the marine environment and pollution prevention, most of which were made under the auspices of the I.M.O.

Since marine pollution became a daily matter for the people and the governments of the region to live with as it presents a real danger to our food security and clear threat to our costs, my choice to write about this subject may be founded on the fact that there are very few studies published thereon compared to the extend and importance of the problem, in addition to some of the better facts on the legislative and administrative situation of the concerned states in the field of protection of the marine environment which will be dealt with in detail in the fourth (last) chapter of this study.

Accordingly, this study, which deals basically with the marine pollution resulting from oil, contains four chapters. The first chapter will examine some of the geographical & Socio-Economic features of the Arabian Gulf region, and the effects of oil explorations and the Iran-Iraq war on the Sensitive environment of the region. While the second chapter will be reserved for discussing the International Maritime Organization (IMO) due to the effective and favourable role played by the same in the field of safety at sea in general and in the field of protection of the marine environment and pollution protection in particulars; and due to the fact that most of the international conventions-subject of this study were made under its auspices.

The third chapter will concentrate on discussing the international Conventions related to the subject of marine pollution, including technical conventions such as OIL POL and MARPOL, conventions concerning the issue of civil liability and compensation for the lose and damages resulting from marine casualities such as CLC and FUND, and conventions concerning international law such as International Convention and the UN Convention on the law of the Sea 1982. Finally, the forth chapter, made up of two parts, will examine the developments of the national legislation in the relevant states, and the stands of the same with respects to the international maritime conventions - subject of this study, in addition it will analyse the steps taken on the regional level which are embodied in the Kuwait Convention of 1978.

CHAPTER I

THE ARABIAN GULF

GEOGRAPHICAL AND SOCIO-ECONOMIC FEATURES

THE ARABIAN GULF: GEOGRAPHICAL AND SOCIO- ECONOMIC FEATURES

GEOGRAPHICAL LOCATION

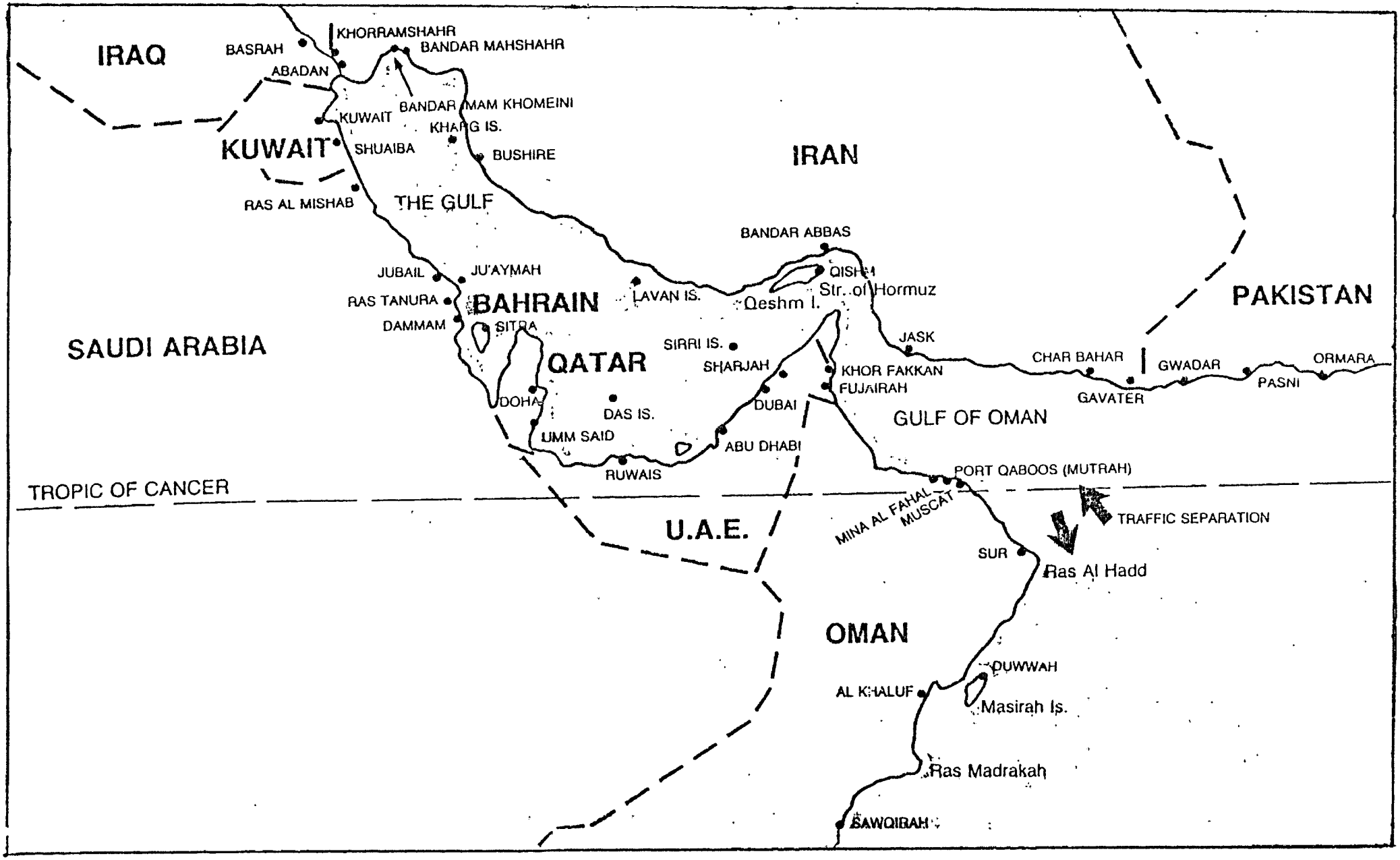
The Arabian Gulf is the shallow marginal sea of the Indian Ocean that lies between the Arabian Peninsula and South-East Iran. It consists of that maritime arm extending between Shatt-Al-Arab at its North-East and the Strait of Hormuz at its South East. It is shallow through which extends 500 miles, with its width ranging from 180 miles in some parts to 26 miles, in others. The water of the Gulf cover an area of some 2 41,000 square kilometers, slightly larger than the Gulf of St.Lawrence and about two-thirds the size of the Baltic. Generally shallow, its greatest depth is about 100 meters and its average no more than 40. The deeper waters are found mostly in the lower part of the Gulf and along the mountainous Iranian coast which contrasts markedly with the generally low lying shore on the Arabian side. The narrowest part of the Gulf is at its entrance in the Strait of Hormuz. This is bounded on its northly side by the coast of Iran, including the close inshore Iranian islands of Qishm, Henjam, Larak and Hormuz. The southerly side is formed by the great promontory of Oman, terminating in the Masandam Peninsula (under the sovereignty of the Sultanate of Oman), Three small islets known as Salamah wa Binatahan or the Quoins lie in the Strait within nine miles of the Masandam Peninsula, and the most constricted part of the Strait (20¾ miles wide) is that between these islands and Larak to the north. In this area about 16½ miles of the Strait's length is 26 miles or less in width.

The Gulf is bounded by the Iranian Plateau on the north, north-east and east, and on the west it is bounded by the Arabian Plateau which rises gently and to a lesser altitude from a wide and mostly desert coastal plain. The Arabian side is composed of Iraq, which occupies a part of the Gulf's northern edge including Shatt-Al-Arab at its estuary; Kuwait, which follows along the south -western shore for some 90 miles; and Saudi Arabia, which stretches 250 miles, sharing with Kuwait 45 miles of the coast of the Neutral Zone.

The Peninsula of Qatar follows, running northward in the Gulf for about 90 miles. Between the tips of this Peninsula and the shores of the mainland there is an archipelago known as Bahrain Islands being 18 miles from the former and 20 miles from the latter. The Trucial Coast (now known as the United Arab Emirates) extends from the base of Qatar eastward for some 400 miles until it terminates in the Strait of Hormuz $(*)_1$.

The Arabian Gulf is often used to refer not only to the Gulf proper but also to its outlets, the Strait of Hormuz and the Gulf of Oman, which open into the Arabian Sea.$(*)_2$ (See the Map No.1 in the following page).

MAP NO.1 - THE ARABIAN GULF



THE GULF IMPORTANCE

The economic, stratigic and political importance of the Arabian Gulf Region has become evident day after day, the importance which was never at one time a subject of dispute among researchers eventhough their approaches differed. The legal importance of the region also has begun to be appearant after the U.N. Convention on the Law of the Sea came to light; the Convention which stipulated the legal principles governing the difinition and delimitation of the territorial sea, the continental shelf and the exclusive economic zone of the coastal state, in addition to stipulating the legal system for straits used in international navigation (e.g. Strait of Hormuz).

The Gulf in general and the Strait of Hormuz in particular was given special legal importance when IMO established navigational lanes and traffic separation schemes in the Strait, as IMO does not take it upon itself to perform such a task except in dangerous areas due to its narrowness density of traffic going through it, which is exactly the case with the Strait of Harmuz $(*)_3$.

(i) STRATIGICAL LOCATION

The clossal wealth of Hormuz, the exceptional importance of the Arabian Gulf as a centre for trade between East and West have long drawn the greedy attention of foreign invaders. For centuries European powers - the Portuguese, Dutch, British, French and Germans have sought to dominate the Gulf, to control the important sea and land communications between Europe and the Middle East, East Africa, South Asia and the Far East.

The formentioned strategic location did not devoluate over time, on the contrary its importance increased due to another added dimension, namely the discovery of oil.

The Arabian Gulf, which contains about 55% of world oil reserves and forms the most important oil production region in the world alongwith the Strait of Hormuz occupaid a special and undevided attention on both the regional and international levels not only from a strategic defence point of view but also for political, economic and legal considerations. On the one hand, this emplies that the attention paid to the region and its natural water way by the coastal states of the Gulf should not be less than the attention paid to it by the outside world which recognizes the oil coming from the region as the vein of industrial life in the world in general. On the other hand, the increased dependance of the Gulf States on importing capital and consumption goods, weapons and various services, from both the Western and Eastern Worlds, which are carried by ships to the Gulf through the Strait of Hormuz completely parallels the increased dependance of the outside world (specially Western Europe, Japan and U.S.A) On Export of Crude Oil and Refined Products transported from the Gulf by Sea, using VLCC's and ULCC's which cannot but pass through the same vital water way towards world markets $(*)_4$.

Before the Iran-Iraq War, about one-third of the world's daily oil production, and one-fifth of Gulf imports, passed through the Strait of Hormuz. The main shipping channel through the Strait, which utilizes the shortest route around the Musandam Peninsula of Northern Occean, is 30-35 Kilometers long and 8-13 Kilometers wide. Under the Shah, the Strait was dominated by Iran. While Oman nominally controlled the Qu'oin Islands in the middle of the Strait and the Key passage to the South, Iran had naval and air supremacy from bases just to the north. It also held Abu Musa and the Tumb Islands in the South Eastern Gulf, which it had seized in late 1971. The Shah's December,1977 Agreement with Oman to share security responsibility over the entire Strait even gave him authority to patrol the key tanker routes in Omani waters. He also moved Iran's Naval Headquarters from Khoram Shaher to Bandar Abbas at the Northern bend of the Strait of Hormuz and developed a new port at Chah Bahar on the Iranian coast of the Gulf of Oman, giving Iran a "Blue Water" port for its expanding navy.

The disintegration of Iranian forces since the Shah's fall has ended Iran's Naval domination of the Strait. Iran has not entered the key tanker passages between the Omani-held Qu'oin Islands and the Musandam Peninsula since an abortive attempt to challenge British and Omani vessels in late 1980, although it has renewed threats to do so in mid 1983 if Iraq should successfully attack Iranian oil facilities.

The channels are also too large to be highly vulnerable to any "terrorist" attack. The inbound and outbound channels are separated by a prohibited area about 2 Kilometers wide. Depth in the channel generally range from 75 meters to more than 200 meters. The outbound main channel is wide enough and deep enough to enable shipments to continue even if two super-tankers were sunk in it. Outbound tankers can also avoid any danger in the channel by passing through the broad, shall over part of the Strait north and east of the Qu'oin Islands, where depth range from 45 to 30 meters. This depth is more than adequate to permit passage of the largest super-tankers. The currents is in the area are also erratic and uncharted, and the Straits would be difficult for any regional power to mine (See Map.2).

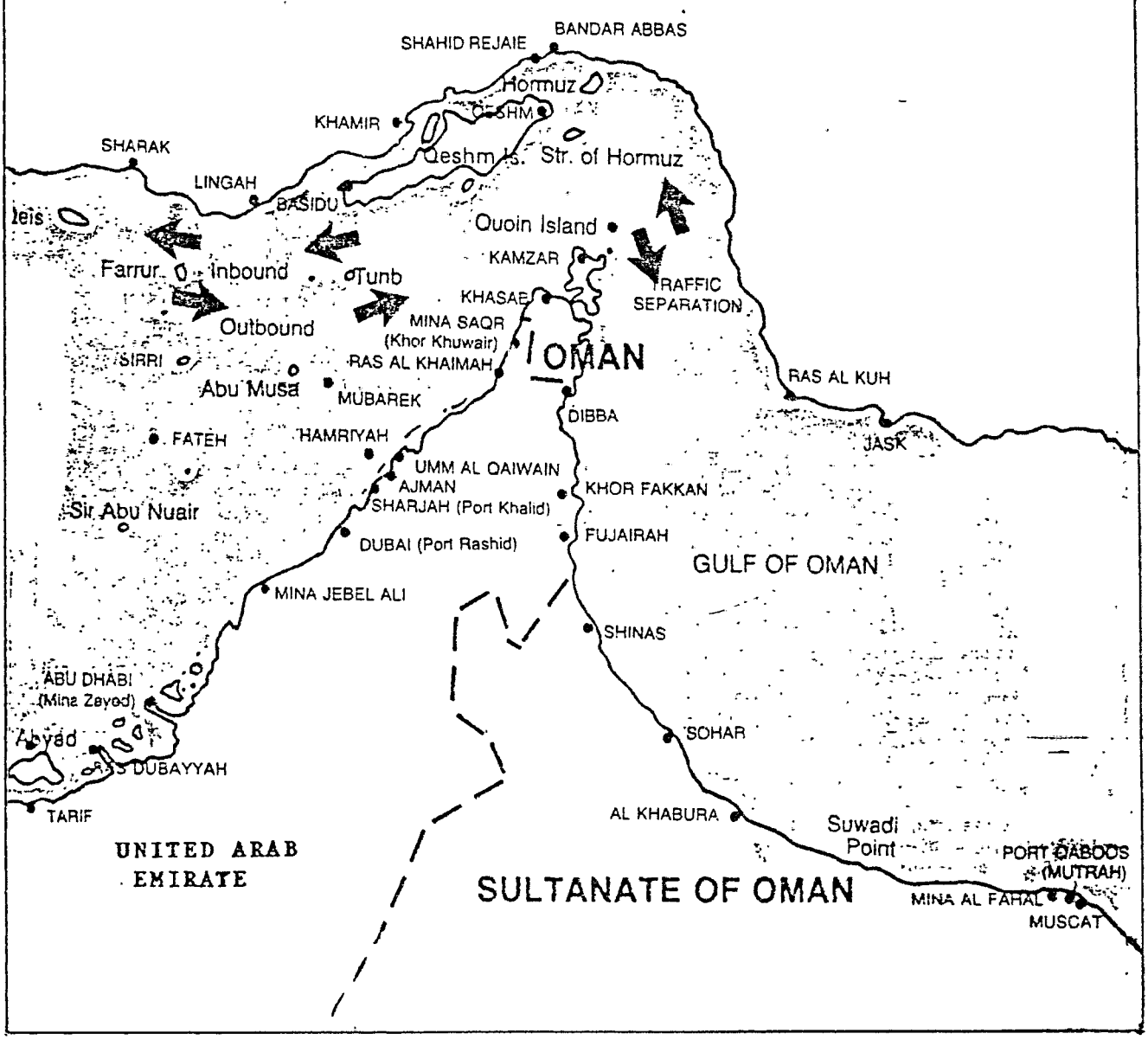
The Gulf states now have few current alternatives to use of the Strait. The pipeline routes that by pass the Gulf are limited and politically vulnerable.

The recent surge in Gulf imports of consumer and industrial goods from the West can also be affected by interdiction in the Strait. Most of the raw materials and building equipment and much of the food for the Gulf nations must be imported. Gulf countries imported about $80 billion worth of goods in 1980 and similar amounts in 1981. No dependable alternative overland and transportation system now exists that is capable of handling such a large volume of goods.

Map No.2 .

From Quoin Island to:	Miles	Hours (at 16 knots)
ABADAN	540	34
ABU DHABI	175	11
BAHRAIN	335	21
BANDAR ABBAS	42	3
BANDAR MASHAHR	540	34
BASRAH	570	36
CYRUS	445	28
DAS IS	215	13
DUBAI	105	7
FATEH TERM.	125	8
HALUL	230	14
JEBEL DHANNA-RUWAIS	265	17
KHARG IS.	410	26
KHOR AL AMAYA	495	31
KUWAIT	520	33
LAVAN IS.	180	11
MINA AL AHMADI	500	31
MINA SAUD	480	30
MUBARRAS	220	14
RAS BAHREGAN	460	29
RAS AL KHAFJI	450	28
RAS TANURA	375	23
UMM SAID	305	19

Source: Shipping Atlace,1984.



While air and road shipping could certainly supply essential food and consumer goods, they are not economic substitutes for cargo vessels in carrying bulk or heavy material. A halt to shipping could, therefore, put pressure on the Gulf States, although Saudi Arabia has access to deliveries via the Red Sea. It can reduce its dependence on imports through the Strait in any emergency and can do so without depending on the limited road or port capacities of its Western Neighbors. Oman's major ports are also located outside the Gulf, although these have little value in trans-shipment to other Gulf States (*)[5]

The history of the Gulf States divided each nations from the others and limit their capacity for collective action. These historical division are reinforced by the pressures of rapid change. The massive volume of arms transferred to the Gulf over the last decade symbolizes the transformation of the Gulf States from a relatively quiet colonial back water into an area of the structural shifts that now threaten Gulf Strategic Stability. The massive political, economic and cultural changes in the Gulf invitably interact with this military buildup and with the changing competition between the Superpowers.

The events of the last decade have also transformed a relatively low-level U.S. and Soviet struggle for influence in the Gulf area into an intense and potentially decisive one. The risk of direct military confrontation between the Superpowers has grown steadily, and the Gulf is so vital to the West that it is one of the few areas whose potential loss could trigger a 3rd World War. This makes the military build up of the Gulf States, and the various internal security threats to each Gulf nation, critical to all powers concerned.

While the interaction between military development in the Gulf and region's changing military forces and arms sales of the Superpowers are only one aspect of the strategic stability of the Gulf, they are a key aspect indeed.

The other pressures transforming the Gulf-Cultural change, economic development, a population explosion, labour migration, urbanization, the rebirth of Islam, and the creation of new political groups and social and economic classes - can dominate its future only if they are given the time and freedom to do so. (*)6

ECONOMIC IMPACT

The importance of the Arabian Gulf region appeared at the beginning of this century, specially when oil was found in "Masjed Sulaiman" area South of Persia in 26th May,1908, and was expected to be found in the Western Coast of the Arabian Gulf, which prompted British, during the second and third decades of this century, to obtain commitments from the rulers of the Arabian Emirates giving the British alone the sole right of exploring for the oil in these Emirates.(*)7.

A part from historical details, the recent statistics indicate that atleast 55% of the world's proven oil reserves are to be found in the Gulf Area, compared to 7% in the United States and an estimated 14% in the Soviet Union. Described as mere puddles relative to new oil strikes in the Gulf countries, North Sea, Alaskan and Siberian Oil and gas strikes may halt slightly the world's growing dependance on Gulf fuel but will not bring a meaningful change in the chart of proven oil reserves. At present Gulf Countries are already supplying about one-forth of the world's fuel consumption.

Notwithstanding intensive efforts to diversify its sources of energy after the 1956 Suez Crisis (and more seriously after 1973) embargo), Europe still imports (on the average) about 60% of its fuel from the Gulf. It is doubtful if in coming decade Europe will be able substantially to reduce the proportion of fuel imports from the Gulf. With 90% of its total oil importation coming from the Gulf Countries, Japan, the third largest industrial country in the world, is at present utterly dependent on this source.

For political-strategic reasons the United States has been reluctant to import oil from the Middle East and only 3% of its fuel requirements have come from the Gulf.(*)[8]

Table No.1 below gives different data. However, my intention here is to show the dependance of the West on the Gulf Oil regardless the comparative changes in some data.

TABLE NO. 1

WEST's OIL DEPENDANCE (%)			
	United States	Europe	Japan
Total Oil Imported	49	96	100
Oil imported from Gulf	34	61	72
Gulf oil as % Total Energy	8	32	53

Source : The Middle East Magazine, London, April, 1984.

The West has had considerable success in increasing domestic oil stocks and creating strategic reserves. Most Western Countries now have sufficient oil reserves to cushion themselves against a short-term loss of oil or the worst effects of any repetition of the 1973 embargo .

The United States has finally begun to make major progress in filling its one billion barrel strategic petroleum reserve and now well over 300 million barrels of oil in the reserve. Most other Western Industrialized Nations are creating reserves equivalent to 90 days of imports.

Such reserves, however, donot reduce the West's long-run dependance on Gulf Oil, they simply act as temporary buffers that can reduce the impact of short-term crises or wars. Strategic reserves do not substitute for domestic sources of energy, they cannot cope with the destruction of critical oil facilities - whose repair often requires equipment with one-to-two year lead times- and they cannot protect the West from a concerted effort by the major oil-producing states to use oil as a weapon. No Western nation, for example, plans to be able to cope with a major reduction in imported oil for more than six to nine months, and none can readily draw down on its reserves except in a major emergency.

The present oil glut is the product of recession, not of Western success in reducing its dependance on the Gulf, and this ression has done as much to inhibit the growth of alternative energy supplies as to reduce oil imports (*)$_9$

To determine the economic and strategic importance of the Arabian Gulf, it is necessary to consider the importance of each country individually. All of the Gulf States, generally speaking, are important, but Saudi Arabia is the key to securing the West's energy supplies. Saudi Arabia alone has 25% of the world's proved oil reserves and roughly 30% of sustained production capacity of the Organization of Petroluem Exporting Countries (OPEC).

The other "conservative" Gulf States are individually less important and cannot survive unless Saudi Arabia remains friendly and stable. They too, however, are vital importance to the West.

Collectivelly, they have roughly 50% of Saudi Arabia's oil production capacity and about 16% world oil reserves.

The west has a major strategic interest in preserving the independance of hostile or "radical" Gulf states like Iraq and Iran. While there is little real prospect of stable strategic relations with either state, Iran has another 8% of the world's oil reserves and Iraq has 6%. Friendly or not, it is vital to the west that both states retain their independance and ability to make their own oil export decisions. (See Table No.2).

Although the strategic interests of the "conservative" Gulf States, and even Iraq, concide with the West in several key areas, there are also many areas of tension and conflict. The Gulf states internally divided, and even the most friendly "conservative" Gulf States have different interest from the U.S in prising their oil and setting regional security policy(*)10.

The most important common bonds between the West and the Gulf States are long personal ties, oil, and economics. The Gulf states have almost as much as need to export oil as the West has to import it. Oil revenues make up 70-95% of the GNP of the Gulf Oil exporting states. Although many Gulf States have built up substantial capital balances from their recent oil revenues, all but Saudi Arabia and Kuwait have effectively "mortgaged" their revenues through ambitions economic and military developments plans, expensive social services, and the need to fund the transition to downstream petrochemical operations.(*)11

TABLE NO. 2

STATISTICS OF OIL FOR THE GULF AREA, 1950-1982

(Billions of barrels)

Name of Country	Year of Production	Cumulative oil Produced (as of 1.1.80)	Production 1981(1000 of barrels per day)	ESTIMATED PROBABLE OIL RESERVES				Percent Reserves to the Gulf Area
				1950	1965	1980	1982	
Saudi Arabia	1938	38.7	9827	10.0	66.2	166.5	165.3	44.98
Bahrain	1934	0.7	44	0.2	0.2	0.2	0.2	0.05
Kuwait	1946	21.4	1101	15.0	68.7	68.5	67.2	18.29
Oman	1967	1.4	317	---	0.5	2.4	2.7	0.74
Qatar	1949	3.0	414	1.0	3.0	3.8	3.4	0.92
U.A.E	1962	6.3	1512	---	10.0	29.4	32.4	8.82
Sub.Total. "Conservative" Gulf States.		71.5	13215	26.3	148.6	270.8	271.2	73.80
Iran	1908	29.4	5663*	13.0	40.0	58.0	55.3	15.05
Iraq	1927	14.6	2600	8.7	25.0	31.0	41.0	11.15
Sub.Total of other Gulf States		44.0	8263	21.7	65.0	89.0	96.3	26.20
TOTAL OF GULF AREA		115.5	21478	48.0	213.6	359.8	367.5	100.00

* - Data for Irans' Production per day is for the year 1977.

SOURCE For the construction of this table, data are taken from many sources mainly;

(a) Economist Intelligence Unit (EIU), Oil in the Middle East: Annual Supplement, London 1978.

(b) Cordesman, A.H. The Gulf and the Search for Stragetic Stability; WESTVIEW, 1984.

OIL, DEVELOPMENT AND THEIR EFFECTS

The economic history of the Gulf region, prior to oil, refers to several activities in which the population was envolved which were in compatability with the nature of the geographical location, the available resources and the preferences and tendencies which charicterized the people of this region; therefore it accumulated a number of experiences in connection with such activities. Such activities were manifested in trade and commerce, shipping, fishing, pearl fishing, and fishing boats' building in addition to some occupations connected with agriculture and irreegation.

The diving industry (pearls fishing) is considered the most important classical activities of the economy practised by natives of this region from all antiquity.

Working in this industry was very hard and suffering. This nature was not to start and to end on doing the job as a job, but this course used to follow the diver wherever he is, either on board of the diver's boat or on shore. The social discrimination to this profession was to increase the suffering of the diver over his suffering from the work itself, as he used to gain out of this profession only some crubmles to survive, and to enable his master to continue exploiting him and his family after words.

In connection with trade and shipping services, the coastal location of the Gulf States (on the Arabian Gulf) and the limited natural resources of the same lead, the inhabitants of such states towards the services connected to trade and shipping, which were practiced for a long time as a means of livelihood for the population. The occupation of shipping, traveling and trading, between the Gulf region and other parts of Asia and Africa, became to represent a principle and main occupation for the region's population. However this shipping envolvement met in the nineteenth century a very stiff competition from shipping services provided by steam ships which lead to its decline. Despite of the aforesaid shipping maintained its existance between the Gulf ports and the ports of the Red Sea and South East Asia, and the shipping services remained as the second

main activity practiced by the population of the Gulf Emirates. Thus, in Bahrain for example, the number of ships working in shipping during 1905 was around one hundred ships.

However, during World War I, and as a result of the disturbances to shipping services bared on steam engines, the Gulf region regained its traditional role in shipping, and Kuwait occupied the first port in importance in respect of this activity. At the end of the 20's of this century, the number of ships in the Kuwaiti Commercial Fleet reached to 150 ships which an overall capacity of upto 40,000 tones. Yet these occupations become weak during the period in between the two World Wars, but activities resumed during World War II once again. This was so because shipping services were tied to the pearl fishing operations.

In addition, the Arab population of the Gulf region had sea born trade not only with the nearby countries but also with most of the ports in East Africa and Southern Asia. Therefore, commerce, buying and selling was practiced between one port and another and the principle commercial centres were in Kuwait and Bahrain while Dubai played its role as an important centre at the outset of this century. These three main centres met the needs of the interior parts of the Arabian Peninsula, Southern Iraq and Oman.

Regarding Boat building, the Arabian Gulf Emirates were famous for building all boats needed for pearl fishing operations and shipping. Such an activity was centerd in Kuwait and Bahrain, as Bahrain's production reached 119, 74, and 89 boats in the years 1926, 1927 and 1928 respectively. During the twenties of this century this industry succeeded installing Diesel Engines on the locally built boats. In addition, it was possible to build a small oil product tanker during 1930 which transported oil from Abadan to Bahrain, which this industry in Kuwait reached the capability of building yachts designed to European Style, which were 65 feet in length in 1931 then 80 feet in length in 1932.

Furthermore, the inhabitants practiced some agricultural activities in some parts of the region, especially in Bahrain, the oases arears in the enterior of the United Arab Emirates and the Eastern Province of Saudi Arabia, which agriculture played a very limited and minor role in both Kuwait and Qatar. Despite this, the area of cultivatable land suitable for agriculture in Bahrain during the thirties did not exceed 5% of its total area. The main agricultural products of the region were dates, of which Bahrain produced 5200 tones in 1965, lemons, bananas, oranges, tomatos, onions and mellons as well as other vegetables in addition to tobaka which was produced in some areas (*)12

Appearance of oil as the main source of energy, with good world demand and as an economical power, made the region one of the most boiling and polarising areas of the world. This does not mean that the region had no importance in the past. But the appearance of the oil in such attendant size and force, increased the importance of the region Arab-wise and World-wise.

Discovery of oil and investing its revenues, gave this area a strong financial capabilities which helped it to change from a life of poverty and pittance to an economy of the abundance and affluence.

On the other side, oil helped in realizing progressive changes in the social and political structure of the traditional society.

The oil did not arrive for the economic and social development to start but to help speed the level of development in the Arabian Gulf Societies through changing the economic structures, thus leading to the creation of general social services such as health and education on a wider scale (*)13

With the appearance of the "new oil era" financial revenues from oil has been increased, due to the continuous increases in oil prices, generating immence financial capabilities adding riches to the government treasure without planning and studies on the best utilization of this wealth.

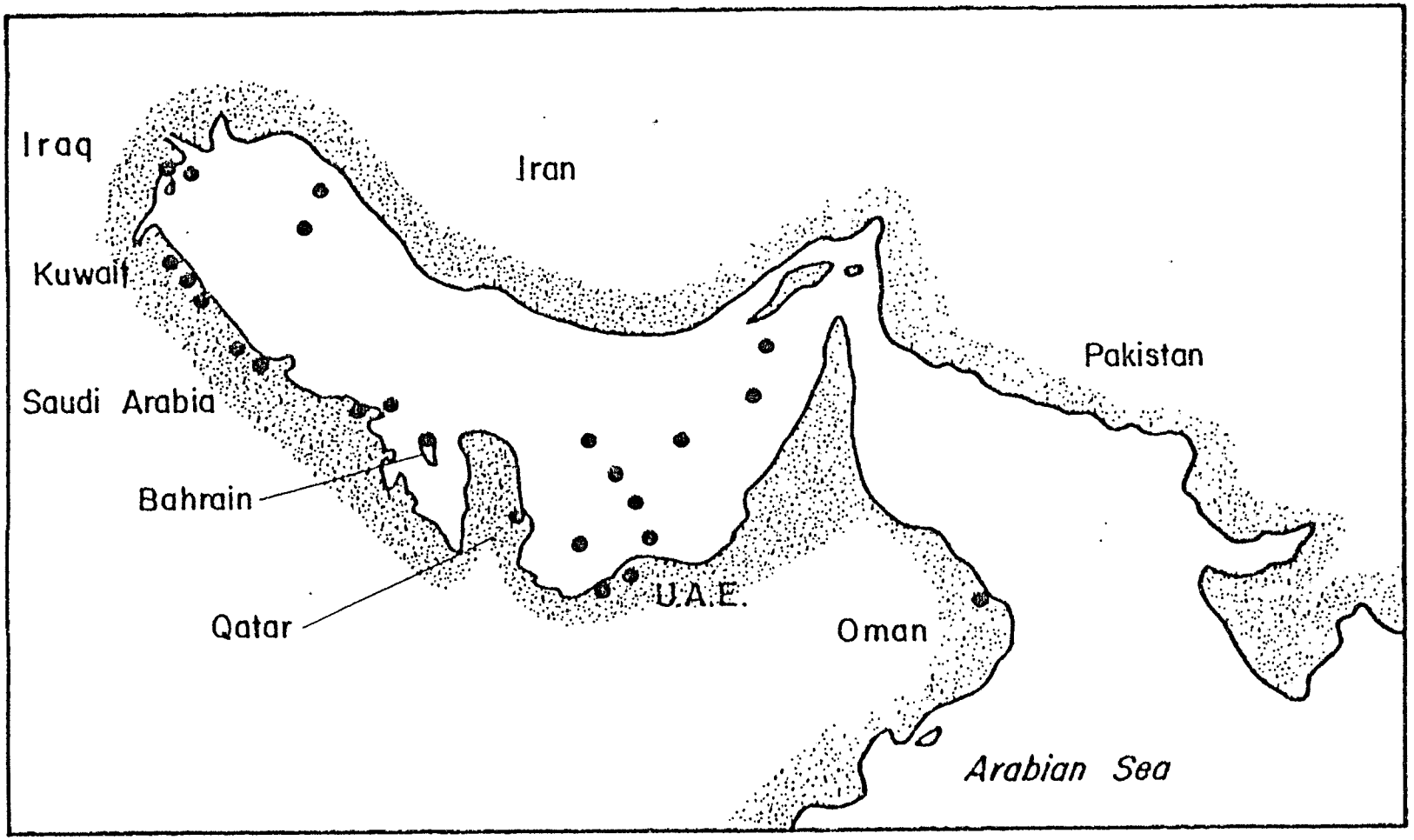
The great and sudden changes imposed an increasing demand for the qualified and un-qualified (in most cases), labour that could not be met locally, obliging it to open the door for imported labour.

We have discussed to a considerable length the effect of oil explorations on the economic and social life, but we did not question ourselves, not even once, about the negative environmental impacts which were brought about by the oil. Therefore, it is imperative, as we are considering the subject of oil exploration and its environmental impacts, to touch upon the actual results of oil explorations and the role of industrial developments in creating the so called "ecological problem".

Oil exploration were followed by serious attempts to refine the oil locally, either to meet the local demands or for other strategic principles, which may have been kown to the powerfull people in the foregin oil comapnies at that time. These attempts resulted in building an oil refinary in each of Abadan (Iran) and Bahrain (1935). In the present time, most states in the region have refineries for refining their oil, especially after establishing their national oil companies and taking over the control of their oil production, refining and marketing.

Oil exploration and the possibility of its commercial use lead to the need for especial oil ports (terminals), for exporting the oil, fitted with all necessary facilities for pumping the oil through the oil pipes to the VLCC's and ULCC's would inturn transport this vital substance to world markets. Lately, such ports and terminals were increasing in number and capacity (see the Map No.3), in addition to the oil pipe-lines extending under the Gulf waters - between Suadi Arabia and Bahrain for instance and the probability of making new simillar pipelines to reduce the dependency on a such a wealth, lead to thinking of permenant alternatives which could save such states from any related difficulties they may face (e.g. a sharp and prelonged depression in oil revenues).

MAP NO. 3



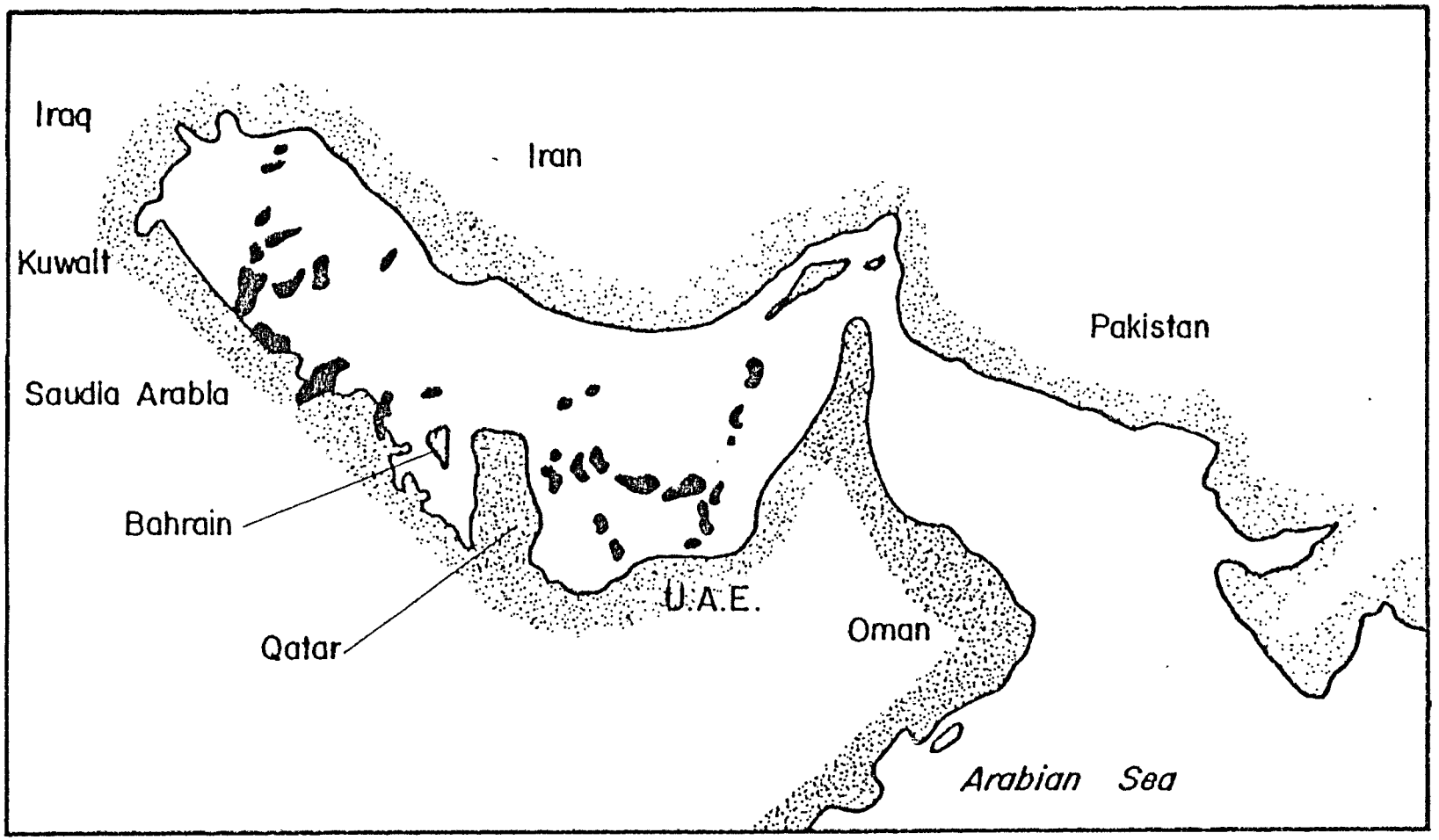
Near and Offshore oil terminals in the ROPME Sea Area. (Behbehani, 1983)

The Arabian Gulf region witnessed during the 1970's the highest rates of industrial development in the world. In four Arab Gulf States namely, Kuwait, Bahrain, Qatar and UAE, the location of most of the main developments is coastal. While several developmental projects of Saudi Arabia and Oman are situated in non-coastal areas, a main part of their projects are centred on their costs, and a simillar situation can be expected to exist in Iran and may be even in Iraq. The density of investment on the Arabian coast of the Gulf, between Ras-Al-Khaima and Shat-Al-Arab including Abu Dhabi and Bahrain amounts to 40 million US Dollars per Kilometer and on the Iranian Coast to 20 million US Dollars per Kilometer. Moreover, most of the regions states witnessed huge programmes of industrial diversification, which were executed at one of the fastest rates and most densified in the world. This is due to the inclusion of several heavy industries containing a clear element of environ mental pollution such as fertilizers, cements, iron and steel products, plastics, alluminium and petrochemicals.

It has also been indicated that at least one-tenth of the total production of crude oil in the Arabian Gulf comes from a large number of sea wells. Hence the risk of oil pollution, whether from sea bed activities or shipping is too great (See Map No.4).

Thus the Gulf societies prior to the oil were not a war of the " ecological problem " and pollution in all forms was a strange matter to them. Accordingly, it is natural for the " ecological problem" to be one of the results of industrial developments which was consequent to the oil explorations in the Gulf region.(*)[14]

MAP NO. 4



Offshore oil fields in the ROPME Sea Area.
Information source: International Petroleum Encyclopaedia, 1982 edition - Behbehani, 1983.

IRAN - IRAQ WAR -
NEW PHENOMENA, NEW SOURCES OF MARINE POLLUTION

In the time when the Iran-Iraq War entered its fifth year, while it was assumed for it to end in few weeks, the presumption of reaching a peacefull solution acceptable for the two parties at war, or of military settlement of this awful war is a far one at which to arrive. What concerns as here is not the distruction to both countries, their people and their economics, as this is out side the scope of this research. Our concern is on what the war has brought, in terms of additional environmental aspects which has gone, in its details and results, beyond the two countries at war to all the countries in the region and included the whole Gulfs' waters, coasts, sea living creature and ships. Accordingly, this topic is the subject of our study in this section.

The outbreak of war between Iran and Iraq on the 20th September, 1980 had the effect of trapping some 80 vessels in the Shatt-Al-Arab, the water way connecting the port of Basrah with the Arabian Gulf. Since the war broke out, it has passed through several phases.

The Nowruz well blow-out incident was the first phase. This incident was considered the longest oil spill in the world.

Nowruz oil field is one of the producing fields in the Bahregan district of the Iranian Offshore Oil Company. It is located 64 Kilometers North-West of Kharg Island. Considered as the closest Iranian offshore oil field to the Iran-Iraq battle front. The production of this field was discontinued when the war started.

On January 27th 1983, the single-well platform (No.3) started discharging about 1500-200 BPD of heavy crude oil with an API gravity .. The exact cause of the blow out is not known but according to some sources, a tanker collided with this platform two years ago causing heavy damage that was not repaired.

Corrosion, wave action and other natural factors weakened the platform structure causing partial collapse resulting in breakage of the conductor near the bottom of the sea where the discharge of oil started.

The additional platforms number 5 and 9 in the same oil field were reported damaged by military action on March Ist and 2nd 1983, causing the blow-out of 3 wells on platform No.5 and at least one well on platform No.9 leaving the two platforms on fire.

The total estimated discharge form 27th January 1983 until 17th September, 1983 was 849,500 barrels. This estimate is based on a daily discharge rate of 1500 barrels from one well at platform No.3 and of 4000 barrels from all wells at Platforms 5 and 9. Other sources estimated the total daily discharge into the sea at 5,000-7,000 and 12,000 barrels for the same period. Thus by 17th September, 1983, a total discharge of 150,000, 1,450,000 and 2,450,000 barrels respectively might have reached the sea.

On 18th September, 1983, Iranian Offshore Oil Company experts were able to plug the original leaking well i.e. platform No.3. However, due to the continuing fires on the two burning platforms as well as continuing military operations, it was not possible to stop the flow of oil from the remaining wells at that time.

The condition of the two burning platforms remained unchanged (with exception of further melting on the platform structure) until the 3rd of April, 1984 when experts from the Iranian Offshore Oil Company (IOOC) managed to cap well number 10 on platform 9,

MEMAC was informed by Iranian authorities that the total discharge from the remaining damaged wells, after second capping operation, is below 1000 BPD.

The total estimated discharge of oil into the sea from the Nowruz is very difficult to calculate in the absence of accurate figures, but based on the above estimated rate of discharge, a total of approximately 1,905,600 BLS. might have reached the sea from the beginning of the incident until 30th June, 1984.

Reports of the environmental damage are sketchy and incomplete but there have been some reports concerning living resource in the Sea Area such as dugongs, fish, turtle and bird mortality and of oiled seabirds along the Saudi Arabia Coasts.

Coral mortality in shallow water on Jurayd Island (Saudi Arabia) has been reported and further tests are being carried out to establish the extent of the effects of the oil on coral. In many areas, rocks in the intertidal zones are heavily fouled with oil and this is likely to affect the coastal marine biota.

One report stated that a large tar mat some 200 x 30 metres was found on the seabed adjacent to the inlets of Ghazlan power station (Al-Khubar - Saudi Arabia). While much of the oil which has come ashore in remote locations is being left to degrade naturally and whether there will be significant environment changes as a result, may be premature to anticipate (*)$_{15}$

The current last phase began in the spring of 1984 with the escalation of the tanker war in the Gulf, when Iraq deployed Super Etandard Planes, equipped Excocet Missiles to attack ships lefting Iranian Oil at Kharg Island. 35 Tankers were attacked from March 1984 upto the end of the year. Iraq was responsible for 19 attacks, whereas 16 vessels were hit by weapons deployed from Iranian fighters. The total tonnage involved represents more than 6 mill. dwt. 11 large tankers hit by Iraqi fighters were damaged beyond economical repairs (constructive total loss).

The vessels which will never trade again represents some 2.4 mill. d.w.t., and have been removed for demolition. In comparison, this figure represents some 10% of the allied merchant shipping, which was sunk during the Second World War. (*)16

In respect of the effect of oil pollution on the fishing resources, inspite of the differences in the estimates on the extend of this effect, it is certain that the presence of oil for a long period must have an influence on the structure of the Gulf waters as well as on most of the living organisms in it, eventhough this resource can be relied on the providing alternative sources to the oil revenues. While with oil pollution, the oil sector seems to participate in diminishing the, opportunities of creating a viable alternative for its replacement when exhausted, instead of participating, through the revenues it generates, in supporting the base of this alternative.

As regard the sources of waters, the subterranean storage, which is estimated to last only for fifty years in some countires of the region, it is noticed that this article is among those most subject to the effects of environmental pollution. This is due to the expected closure of the sea-water destilation plants and thus the drawal from subterranean storage which is likely to be "depleted even faster than oil. The Gulf officials state that the presently privailing thinking is that of providing quantities of the subterranean waters for some areas or extracting from the other nearby areas to offset the deficit in the water supply which could accure as a result of the actual closure of the distilation plants (*)17

FOOT NOTES

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7. Dr. Bader Eddin Al-Khussussi - The U.S. Concern with Arabian Gulf Oil Between the Two World Wars. Journal of the Gulf and Arabian Peniusula Studies. Vol. VIII No.31 July, 1982 - (Arabic).

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9. Anthony H.Cordesman - Supra on p.12

10. Anthony H.Cordesman - Supra on p.2

11. Anthony H.Cordesman - Supra on p. 68

12. Dr. Beseisu, Fuad Hamdi - Altaawon Alenmaei Bein Aqtar Majlece Altaawon Alarabi Alkhaliji - Development Co-operation among G.C.C. States - Beirut, Lebanon, May, 1984 - on p.35 (Arabic).

13. For more details on the role of Oil in Social change and Economic Development, See Dr.Al-Romaihi, Mohammed Ghanem- Moaqeqat Altanmeia al Ektesadeia fi Mojtamaat Alkhalij Alarabi Almuassera - " The Social-Economic Developments' Obstacles in the contemporary Arabian Gulf Societies". Kuwait, 1984, (Arabic)and also for the same auther - Albetrol Waltaghayor Alejtemaei Fi Alkhalij Alarabi - " Oil and Social Change in the Arabian Gulf " Kuwait, 1975. (Arabic)

14. For more details on the impact of the oil industry on Marine environment in the Arabian Gulf-See, A. Nelson - Smith; effects of oil-Industry Related Pollution on Marine Resources of the Kuwait Action Plan Region. UNEP. Regional Sea Report and Studies No.44, 1984, p. 35. See also - O.Linden: Biological Impact and effects on Fisheries of Oil Spill in Bahrain, August, September, 198 previous reference on p.53.

15. For more details on the Nowruz well blow-out, See Khalid M. Fakhro, MEMAC and the Nowruz Spill - International Symposium on Regional Cooperation Oil Spill Prevention and Combating Copenhagen, Denmark, Sept. 17th - 21st, 1984. (Also see Dr. Badreia Al-Wadhi - Legal regime to combat Oil Spill from the Nowruz Oil Field in the Arabian Gulf.(Bahth Fi Alnezam Alqanuni Lemokafahat Altassarub Alnafti men Hakel Alnowruz Fi Alkhalij Alarabi - "Arabic")Kuwait, 1983.

16 For more details on the Iran-Iraq War and its impact on the shipping business see: Iran Iraq Conflict.March, 1984/85 - published by Intertanko - OSIO and also see Paul Woodward feeling the heat - Seatrade, June, 1984.

17. Dr. Beseisu, Fuad Hamdi - Supra at p. 177.

CHAPTER II

INTERNATIONAL MARITIME ORGANIZATION

INTRODUCTION

Discussing the International Maritime Organization, means reference to the international co-operation in the fields of safety of life at sea and marine environment protection and issues related to them. Such co-operation is natural and presents an unseprable part of the overall human co-operation embodied in the United Nations and its' agencies.

Our world today, eventhough having different political, economic and social systems,is in an urgent need of this form of co-operation. As such a direction, in the final analysis, serve to achieve goals of the United Nations which were approved by the majority of the World's Nation States.

ESTABLISHMENT

The idea of establishing an international organization to be concerned with the maritime affairs came into being at the end of the nineteenth century. The idea was discussed in many occassions, in Washington 1889 and in Petrograde 1912,where the international maritime conference held, wittnessed a serious discussions for the idea of establishing an organization.

After the Second World War and under the UN administration, were it was the only proper place for international action, the idea of an international maritime organization brought to life again.

In Washington 1946, a group of maritime states prepared a draft convention for the possibility of establishing such an organization. The UN Economic and Social Council (ECOSOC) called for a meeting to complete the unfinished work for the establishment.

In 1948, a full maritime conference was convened under the auspices of ECOSOC at Geneva. During the long conference the Convention of the Inter-Governmental Maritime Consultative Organization (IMCO) (*)$_1$ was worked out and finally adopted and opened for signature on March, 1948. It required the acceptance of twenty one states, including seven with at least one million gross tons of shipping each (Art. 70). This requirement was fulfilled on 7 March, 1958, after Japan ratified it and completed the twenty one ratifications and the new organization was inaugurated in Jan, 1959, when the first session of the Assembly was held in London. London was then chosen to be it's Head Quarter.

When the establishment of a specialized agency of the U.N. Concerned solely with maritime affairs was first proposed, the main concerned was to envolve international machinery to improve safety at sea.

This was understandable for two main reasons. In the first place seafaring has always been one of the most dangerous of occupations. In the second place, because of the International nature of shipping industry, it had long been recognized that action to improve safety in shipping operations would be more effective if carried out at an international level rather than by individual countries acting unilaterally and without co-ordination with others. Although a number of important international agreements had already been adopted, many states agreed that there was the need for a permanent body which would be able to co-ordinate and promote further measures on a more continuing basis. However the decision to establish the organization, reflected the wish of maritime nations to consolidate and improve on the forms of international co-operation which had developed over the years in the field of shipping.(*)$_2$

MEMBERSHIP

IMO is the twelfth specialized agency of the United Nations. The members are not only the traditional maritime countries, but also those who depend heavily on the shipping services of other countries.

Members of the organization can be states who are members of the U.N., and states not members of the U.N., but have been invited to send representatives to the U.N. Conference convened in Geneva in 1948.

According to Articles 6 and 7 of the Convention, it is allowed to any of those countries mentioned above to gain membership by becoming a party to the Convention. Admission of the other countries will be granted if they requisite to become a party to the convention and are recommended by the council. Associated membership is another category, which differs from a full membership by, that they have no right to vote and are eligible for the council membership.

PURPOSE OF THE ORGANIZATION

Article No.1 of the convention states the following purposes of the organization:

(a) To provide machinery for co-operation among Governemnts in the field of governmental regulation and practices relating to technical matters of all kinds affecting shipping engaged in international trade to encourage the general adoption of the highest practicable standards in matters concerning maritime safety, efficiency of navigation and the prevention and control of maritime pollution from ships, and to deal with legal matters related to the purposes set out in this article;

(b) To encourage the removal of discriminatory action and unnecessary restrictions by Governments affecting shipping engaged in international trade so as to promote the availability of shipping services to the commerce of the world without discrimination assistance and encouragement given by a Government for the development of it's national shipping and for purposes of security does not in itself constitute discrimination, provided that such assistance and encouragement is not based on measures designed to restrict the freedom of shipping of all flags to take part in international trade.

(c) To provide for the consideration by the Organization of matters concerning unfair restrictive practices by shipping concerns in accordance with part.II;

(d) To provide for the consideration by the Organization of any matters concerning shipping that may be referred to it by any organization or specialized agency of the United Nation.

(e) To provide for the exchange of information among Governments on matters under consideration by the organization.

As far as maritime pollution is concerned, the organization from the very beginning considered the importance of this matter, therefore the paragraph (a) article 1 touches upon the efficiency of the prevention and the control of maritime pollution among other objectives of the organization.

FUNCTIONS

In order to achieve the above objectives the organization;

(a) Considers and makes recommendation upon matters arising within it's competence that may be remitted to it by members, or by any organization or specialized agency of the United Nations or by any other inter-governmental organization;

(b) Provide for the drafting of conventions, agreements, or other suitable instruments, and recommend these to governments and to inter-governmental organizations, and convene such conferences as may be necessary;

(c) Provide machinery for consultation among members and the exchange of information among Governments;

(d) Perform functions arising in connection with paragraphs (a), (b) and (c) of this article, in particular those assigned to it under international instruments relating to maritime matters.

The IMO's institutional framework as a consultative and advisory body of maritime safety, and marine pollution, is provided by article 2 of 1948 Convention.

IMO was still fattered by it's narrow constitution, which required it to be nothing more than a consultative and advisory technical body (*)3

In an industry that because of the history already chronicled here, had become characterized by the domenance of private interests, there was a genuine fear of the sudden imposition of an organization that was expected to function on the inter-governmental level, reducing private interests to an observer status.

The major maritime states regarded IMO as a danger, if it moved outside narrow technical, advisory, and consultative terms of reference, into a more regulatory area, where it might become an unbiased spokesman for all aspects of the industry, particularly those users of shipping services. On the other hand, those shipping services users alongwith eventually, many states in the developing world, saw the Organization as a sort of a " Ship Onwer's Club" conctrolled by, and operated for, the benefit of the world's major shipping states with little power, competence or even concern for other interests in international marine transport(*)4

Twenty years ago, there were reasonable grounds to maintain such a policy, but now-a-days the shipping scence has changed and the IMO has lost its reputation as a "Shipowners' Club", and also has regarded with much less suspicion by the major maritime states. It is seen that there is a vital need for this type of organization in the shipping field.

STRUCTURE

Article 12 of the convention, states that the organization shall consist of an Assembly, a Council, a Maritime Safety Committee, a Legal Committee and subsidiary organization for any matter in which the organization may, at any time, consider necessary and Secretariate (chart 1).

THE ASSEMBLY

Is the IMO's governing body, normally meets once every two years for regular sessions, to approve the actions taking by, the Council, the Committees and the subsidiary bodies, during the previous biennium as well as to make preparations for the comming two years activities.

Although the Assembly enjoys nominally supreme status within the organization, it is usual function is to approve proposals referred to it by other organs. It also votes the budget, approves financial regulations and the appointment of secretary general. The assembly's source of power is contained in electing the members for the two powerful policy-making-organs, the council and the Maritime Safety Committee (MSC)membership to the assembly is opened to all members of the IMO.(*) 5

THE COUNCIL

Is the IMO's most powerful organ, it is small in number,"highly-integrated body with continous authority", meets twice a year, when the assembly is not in session, which is most of the time,

the council assumes nearly all its organizational functions. The council also appoints the Secretary General, and other Administrative Personnel as well as Supervises the Committees that formulate new regulations.

The council does not enjoy the quasi-legislative powers that permit other specialized agencies to automatically bind member states to new rules, but at IMO it regins supreme.(*)6 As the IMO's membership expanded during the last three decades to include many developing countries, the Assembly amended the Convention to provide for more equitable geographical representation. The council was inlarged to 24 member states, by the 1974 amendment. The modest concession was supplemented by an amendment in 1979, where it received the number of acceptance required for entry into force on the 10th of November, 1984, during the 13th Session of the Assembly. Thus the IMO's Council will be increased to 32 members, from 10th November, 1984, when amendment to the IMO's Convention to that effect enter into force.

The Council is made up of three groups;

- Group (a) is reserved for States with the largest interest in providing international shipping services and,

- Group (b) for countries with the largest interest in international seaborne trade. The members of the Council in each of these groups are to be increased from six to eight with effect from 10th November, 1984.

- Group (c) consists of states not elected under the first two categories with special interests in maritime transprt or navigation and whose election will ensure the representation of all major geographic areas of the world.

Members in this category will be increased from 12 to 16. To enter into force, the amendments had to be ratified by two-thirds of IMO Member States-84 out of 125.
This was achieved when the amendments were ratified on the 10th of November by Brazil, Dominica, the Dominican Republic, Gabon, Mozambique and Yemen.

Following a procedure previously used in 1977, the Assembly decided to elect the additional eight Members of the Council at the same time as it elected the 24 Members as provided under the current provisions of the Convention. The 24 Members will take their seats immediately, while the additional eight will take their seats when the amendments enter into force in a year's time.

The new Council is shown in the table below(*):

Members taking their seats immediately	Members taking their seats on on 10th November, 1984
Category (a)	
Greece, Japan, Norway USSR, United Kingdom, United States.	Italy, Liberia.
Category (b)	
Brazil, Canada, China, France, Federal Republic of Germany, Netherlands	Argentina, India
Category (c)	
Egypt, Indonesia, Nigria, Saudi Arabia, Algeria, Bangladesh, Morocco, Spain, Trinidad and Tobago, Cuba, Kuwait, Lebanon.	Gabon, Chile, Bulgaria, Ghana.

One comentator believes that these last amendments has ended "the formal dominace exercised by the developed maritime states".

The council cannot promulgate new regulations, but merely recommended them to member States through Assembly. The ultimate policy-making organ of the IMO remains the international conference. These conferences are, usually, initiated by the committees, who prepare a tentative agenda. To hold a conference it requires the approval of two-thirds of the invited delegates, enter into force only for those nations explicity assenting to them.

A conference convened by an international organization proposes new law in two strikingly different ways. The traditional method have been that employed by IMO, to present the conference with a draft treaty for it's consideration and hopefully, adoption. More recently, however, international organizations have promulgated international law by guasi-legislation.(*)[8]

THE MARITIME SAFETY COMMITTEE (MSC)

MSC was created by the 1948 Convention and until 1978, imposed membership requirements on nations wishing to participate. Atleast eight members of the MSC were required to present the largest shipping countries, (Art. 28).

As the MSC was IMO's primary technical body where most regulations were drafted, this requirement prevented many member-states from effectively participating in the organization. The MSC is now opened to all member-states , as well as the other IMO Committees. (*)[9]
The MSC, normally meets twice a year, it deals with technical matters within the scope of the Organization and connected with maritime safety, such as aids to navigation, construction and equipment of ships, rules for preventing collisions at sea, dangerous cargoes, life-saving appliances, marine radio-communications, standardization of training, watch-keeping and qualifications of officers and crew, and search and rescue.

The range of activities of the MSC can best be gathered from the names of it's many subcommittees, as set out in the structural plan on page (38).

As IMO's work has expanded into the fields of marine pollution and industrial development, a new group of committees have been created, such as the Legal Committee, the Marine Environment Protection Committee, and the Technical Cooperation Committee. These Committees are responsible to the Assembly but are supervised by the Council.

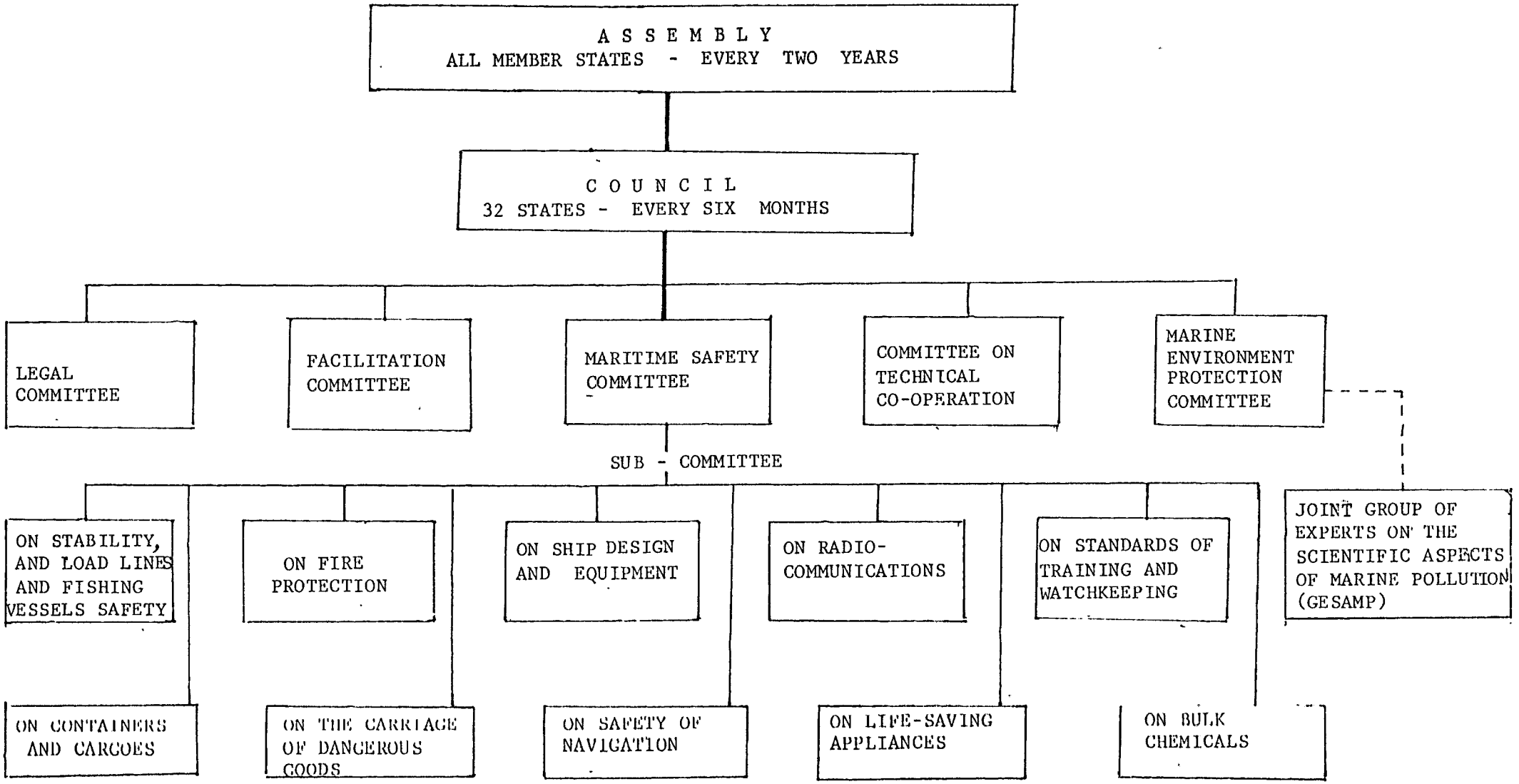
THE LEGAL COMMITTEE

This Committee was created in the wake of the Torrey Canyon disaster of 1967, as an ad hoc body to deal with certain legal issues arising out of, or in connection with, the mentioned disaster. Because of the significance of the issue that were assigned to it, the Legal Committee was upgraded and subsequently institutionalized as a permanent committee in 1975.

The initial activities of the Legal Committee resulted in the adoption in 1969 of two new conventions. One of these conventions, the 1969 Intervention Convention, formulized the right of the governments to take action when their coastlines were threatened by pollution from foreign flag ships outside their territorial waters. The other convention, the 1969 Civil Liability Convention, established a new system for providing compensation to victims of oil pollution damage with an upper limit to the liability of tanker owners for such damage.

IMO STRUCTURAL PLAN

(CHART NO.1)



This later convention was supplemented in 1971 by another convention which established the International Oil Pollution Compensation Fund to provide further compensation to the victims of oil pollution damage.

As a continuation of this work, going back ten years, the Legal Committee has just completed work on the preparation of a new draft convention that is intended to extend the principles of the 1969 Civil Liability Convention to noxious and hazardous substances other than oil. A diplomatic conference was convened in April-May of 1984 has completed the first sixteen-years phase of the work of the Legal Committee by which a number of international ground rules regarding rights and liabilities arising from or connected with pollution damage have been incorporated into international maritime law(*)[10](All these conventions will be subject to detail in the following chapter).

In addition to these main line activities, the Legal Committee as able to deal with a number of other international instruments such as:

(a) Civil liability in the field of maritime carriage of nuclear material, 1971;

(b) Athens Convention of 1974 relating to the carriage by sea of passengers and their luggage;

(c) Convention of Limitation of Liability for Maritime claims, 1976.

TECHNICAL CO-OPERATION COMMITTEE (TCC)

The third of the IMO committees is the Technical Co-operation Committee. As the nature of it's work-aid to developing countries-suggests, this Committee deals not so much with normative rules and regulations but more with the planning and the implementation of projects.

The programme of technical assistant is designed to enable these countries to establish maritime infrastructures where needed or to effectively develop their maritime activities, and to enable them to comply with the provisions and standards laid down in international Conventions and other instruments. By providing such assistance for countries with infant shipping industries, the TCC has increased the interest of the developing countries in IMO.

MARINE ENVIRONMENTAL PROTECTION COMMITTEE (MEPC)

The (MEPC), was the IMO's answer to the sever tankers casualities of the past two decades or so; the name, Torrey Canyon, Argo Merchant and Amoco Cadiz may suffice to list these casualties. The Committee took up the battle against oil pollution with great commitments and worked out the International Convention for the prevention of pollution from ships, 1973 and the 1978 protocol relating thereto (*)11

The MEPC was established by the Assembly in November, 1973, to co-ordinate the Organization's activities in the prevention and control of pollution of the maritime environment from ships.

FACILITATION COMMITTEE

The Facilitation Committee is a subsidiary organ established by the Council and is responsible for the activities and functions relating to the facilitation of international maritime traffic. These activities are aimed at reducing the formalities and simplifying the documentations involved.

All the Committees are opened to the participation by all members Governments on an equal basis. The open membership policy for these Committees should enable developing countries, which had before been excluded from important policy decisions in the Council and the MSC, to participate more fully in the functions of the IMO (*)12.

THE SECRETARIATE

The Secretariate is composed of the Secretary General, Deputy Secretary and a number of International Civil Servants, recruited on as wide a geographical basis as possible. IMO has six principle organs of divisions as illustrated in the organization chart on page 42 .

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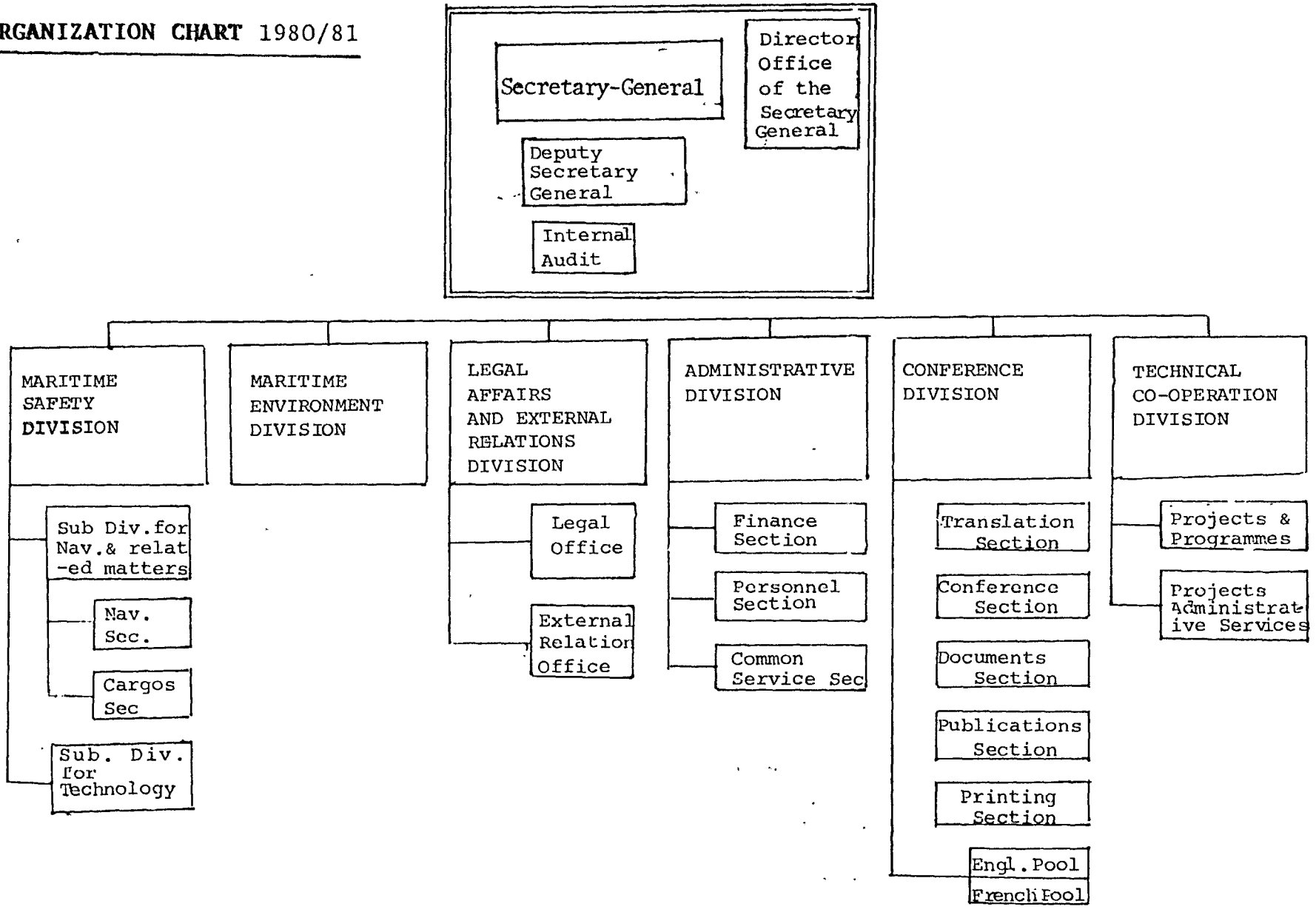
ORGANIZATION CHART 1980/81



THE BIRTH OF A TREATY

Before talking about the "Birth Procedure" of a treaty, I would like to elaborate on two different categories of the IMO's Conventions, firstly those conventions which set out certain standards which are to be applied by all states parties thereto. What is in the foreground here, is not primarily the creation of mutual rights and obligations or the regulation of relations between two or more states but the joint and parallel application of standards by all states concerned with a view to improving international co-operation and international relations. These instruments establish, in particular areas, they deal with standards which states parties to those instruments agree to apply on a uniform and general basis. More specifically in the field of shipping, such conventions aim at uniform standards for ships. This is not so much a goal in itself; rather, such standardization helps to bring about more rational and efficient shipping practices and also tends to ensure that international competitiveness in the field of merchant shipping is not enhanced at the cost of safety of these shipping activities. In many cases, although not always, the standards set by the convention are minimum standard with the effect that states retain the right to set higher standards, particularly in respect of ships flying their flags. Many of IMO's "Technical" Conventions belong to this category of standard setting instruments. Among them are the various Safety of Life at Sea Conventions (SOLAS), the 1966 Load Line Convention, 1973/78 MARPOL Regime, the 1972 London Dumping Convention and the 1978 Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW).

Secondly - those conventions whose aim it is to bring about a harmonization of existing and divergent national laws. They often relate to mutual rights and obligations among states or they may be of a more "Private Law" character and deal with the relationship among individuals. The goal to be achieved here is the identity of various national laws rather than a common international standard. It is to this group that most of IMO's Legal Conventions belong, in particular the 1969 International Convention on Civil Liability for Oil Pollution Damage, the 1974 Athens Convention relating to the Carriage of Passengers and their luggage by sea and the 1976 Convention on Limitation of Liability for Maritime claims. Harmonization and unification are not so much goals in themselves as a recognition of the fact that uniformity of the various national laws relating to international maritime traffic will facilitate and improve that traffic and several conventions were in fact specifically designed to have that effect (*)[13]

We shall go back to the main point, the birth of treaty/ preparation and ratification of the legal instruments:

The actual process of elaboration and adoption of a convention can be devided into two stages. The first stage is the preparatory stage which occurs with the organization itself. Participation at this stage is usually restricted to states which are Members of IMO. In addition to Member States, International Organizations are of course also admitted.

The second stage, on the other hand, is elborated at a so called diplomatic conference or conference of plenipotentiaries.

Additional to what I have mentioned before about the conference, this is a gathering in which an international organization such as IMO will act as a convener and organizer of the conference, but it will not be an IMO meeting.

In particular all the states of the world will be invited to participate on the same footing and with the same right to participate, to submit proposals and, most important to vote(*)14 Once the conference adopts the final text, it would be submitted to governments for ratification. Each convention stipulates the conditions which have to be met before it inters into force. The IMO Conventions take a long time before coming into force. Such delay causes much concern to the organization and some of its members.

Governments never give the reasons for not ratifying a convention. Besides, before ratifying a convention changes in the national law may be needed or, in some cases, special facilities may have to be constructed such as the reception facilities outlined in the 1973 International Convention for the Prevention of Pollution from ships. The crucial issue is the number of ratifications stipulated by the Convention. If a small number is required, the convention will come into force in a short time. Moreover, it is necessary that a convention is accepted and applied by a large section of the Shipping Community. Otherwise it would tend to confuse rather than clarify the shipping practice since its provisions would not apply to a sagnificant proportion of the ships, it was intended to deal with.

Once the Convention is ratified, its provions become mandatory on Member Sates. Recommendations adopted by the IMO Assembly are not, in principle, binding on governments. However, in practice their contents may prove to be important with the result that they will be incorporated in national law. Thus generally speaking, conventions are binding when ratified, resolutions have merely on advising character and the codes stand between the two. Some of the codes have become indispensable tools for conduct of Maritime Shipping.(*)15

AMENDMENTS TO THE CONVENTIONS

In IMO, unlike the other organizations, the regulatory activities were not sufficiently integrated into the institutional structure or normal operations of the agency. The process whereby revision of conventions occurred was consequently cumbersome and slow. As a result, treaty provisions could fall behind technological change and social needs and might well encourage some States to take unilateral actions which could be disruptive to International Shipping. This consideration is of major importance to large segments of the International Shipping Industry (*)16 Recognising the complexity and importance of this problem, a new amendment procedure was devised by IMO. It is called the "Tacit Acceptance" procedure by which amendments enter into force at a particular time unless, before that time, objections to the amendments are received from a specified number of parties (one-third of Contracting States).

The process of "Tacit Acceptance" is a facinating phenomenon in its own right. In legal terms, it may be explained by saying that acceptance of the amendments occurs by mere silence. Alternatively, one can say that the state by ratifying a convention which provides for this type of procedure, waives its right to communicate its acceptance for future amendments. Against this view, it could be argued that where ratification is required for both the convention and the amendments, a state may beleft in doubt and face constitutional difficulties. Again with the "Tacit Acceptance" procedure. Once would imagine that a convention will continue for a long period since it could be amended all the time (*)17

ASSISTANCE TO DEVELOPING COUNTRIES

While the adoption of Conventions, code and Recommendations has in the past been IMO's most important function, in recent years the Organization has been devoting increasing attention to securing the effective implementation of these measures throughout the world.

As a result, the Organization's technical assistance activities have become more and more important and in 1975 IMO took steps to institutionalize the Committee on Technical Co-operation, the first UN body to do so.

The purpose of the technical assistance programmes is to help States, many of them developing nations, to ratify IMO Conventions, to reach the standards contained in the Conventions and other instruments and to promote regional, sub-regional and national arrangements for combating marine pollution in cases of emergency.

The specialities of the advicers and consultants now employed by IMO - in the field as well as at headquarters, gives an indication of the scope of the technical assistance programme. They deal with such matters as Maritime Safety Administration, Maritime Legislation, Marine Pollution, Training for Deck and Engineering Personnel, Technical Aspects of Ports, and the Carriage of Dangerous Goods.

Through the technical assistance programme IMO is able to offer advice on these and other areas, to assist in the acquisition of equipment and the provision of fellow ships by which students can obtain abroad advanced training which is not available in their own countries. In some cases financial aid can be provided through agencies such as the United Nations Development Programme (UNDP), the United Nations Environment Programme(UNEP) and many donor countries.

In order to acquire more detailed technical knowledge, longer training courses are necessary. The World Maritime University (WMU) which was officially opened in July, 1983, is intended to provide advanced training, but sometimes on the job training would be more appropriate.

IMO actively participates in the UNEP Regional Seas Programme to promote regional arrangements for combating pollution in cases of emergency, including the undertaking of over view studies on Oil Pollution, the preparation of draft legal instruments for emergency co-operation, and the organization of seminar and work-shops for the development of regional oil spill contingency plans.(*)[18]

IMO's FUTURE AND PROSPECTIVE DEVELOPMENT

Over the years IMO has continually evolved to meet evolved to meet changing conditions and new requirements. In its early years it was primarily concerned with the formulation of International Conventions and codes. Today that work has largely been completed very few conventions are envisaged for the future, although the work of review and, where necessary of amendment will continue.

For the foreseeable future, however, IMO's chief concern will be to ensure that the conventions, codes and other instruments already adopted are effectively enforced and implemented. Although this trend towards implementation has been evident for some years, it was given formal recognition and impetus by the IMO Assembly when it adopted Resolution A 500(XII), in November, 1981.
The organization call for a period of consolidation and the implement-ation of the various IMO Conventions amidst the practicalities of internatioanl relations and shipping circles. This resolution is quite impressive, not only for its serial number "500" but also because it states unmistakabely that, the following a period of great creative efforts, ...

"proposals for new conventions or amendments to existing conventions only on the basis of clear and well-documented demonstration of compelling need, taking into account the undesirability of modifying conventions not yet in force or of amending existing conventions unless such latter instruments have been in force for a reasonable period of time and experience has been gained of their operation, and having regard to the costs to the maritime industry and the burden on the legislative and administrative resources of Member States."

It goes without saying that despite this warning against new conventions or amendments to existing ones, the long term working programmes does include a number of new projects, such as the improvement of radio communications at sea for the purposes of search and rescue and of navigational warning systems, safety requirements for mobile off-shore drilling units and for off-shore supply vessels, a convention on the removal of wrecks, another convention on the legal status of off-shore and other novel craft such as air-cushion vehicles, quite a number of highly beneficial projects in the field of facilitation of International Maritime Traffic and a most interesting project from the point of view of International law, called "Uniform Interpretation and Application of the Provision of MARPOL 73/78".(*)
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IMO has been viewed as the institutional structure through which the necessary consultations and changes in relevant international law can be made. The adoption of tacit amendments procedures in IMO Conventions increases the capability of the international community to respond to ocean problems within an appropriate time framework. In addition, it may give future impetus to the development of IMO as an International Regulatory Agency.

The number of IMO Member States has grown to 125 and the new members are urguing IMO to become more concerned with their needs and interests. Their demands are reflected in the latest structural alterations within IMO and also in the increasing involvement of IMO in technical asistance programmes.

With regard to budgetary there is still no agreement on the issue of contribution. Liberia, Panama and certain other nations continue to press for changes to the present contributions assessment system which is based primarily on tonnage (See the Resolution A.761 (IV)•Annex.I). A working group was set up with the task of preparing new proposals for consideration by the Assembly.

Another problem is the establishment of diplomatic missions to IMO. Usually delegations consist of government experts and/or some of the embassy staff and therefore they cannot qualify for a diplomatic mission.

At the insistence of the Soviet Union, IMO and the United Kingdom have recently amended and extended the "Head Quarters Agreement" to open the way for the establishment of permanenet missions to IMO. The Government of the United Kingdom did not declare its' consent until a compromise had been reached for an accreditation procedure that will require the member government wishing to accredite a permanent representative to IMO to inform the IMO Secretary-General of the name and rank of such person before accreditation. The Secretary-General in turn, must inform the Governmental of the United Kingdom of the nomination and obtain the views of the Government thereon. When it raises an objections; consultations must take place to nominate another person.

Another area where progress has been made and can be improved upon is that of direct governmental relations. IMO has been entertaining close working relations with other international organizations having maritime responsibilities, as well as with regional unions of a political and for economic character such as the League of Arab States, the Organization for Economic Co-operation and Development (OECD), and the European Economic Community (EEC).

Besides its relation to governmental organizations, IMO's co-operation, with so called Non-governmental Organizations ("NGO's") deserve mentioning. Numerous associations, delegating highly qualified technical experts to the appropriate IMO Sub-Committies, not only provide their advice on particular problems or take other a whole complex of preparatory work, but they also promote the implementation of convention provisions following their adoption. Among these NGO's are such well known organizations as the International Chamber of Shipping, the International Union of Marine Insurance, the International Radio Maritime Committee, the International Federation of Ship-masters' Associations, the International Association of Classification Societies, and the Oil Companies' International Marine Forum. Organizations may officially be granted "Consultative" status; pre-requisites include an application to that effect and formal admission procedures. Of course. as IMO kept growing, it was inevitable that among the applications received by the Organization were some comming in from associations that had minaly an interest in adding a line in their letter heads referring to their consulative status or from associations that barely concealed downright business interests behind their names. A set of guidelines for the granting and withdrawal of consultative status (IMCO Doc C/XL/20(a) 1978) tightened up on earlier rules of admission and made it easier to turn down applications. It was on the strength of those guidelines that the Organization could recently be relieved of a number of useless would be consultants.

Looking further ahead in time, IMO also will have to undertake those tasks and responsibilities that the United Nations Convention on Law of the Sea will confer upon the Organization, both expressly and implicity. It is an evident proof of the high reputation the Organization enjoys that the Law of the Sea Conference was increasingly willing to delegate responsibilities to IMO and, on occasion even conferred upon it the role of a mediator. The technical standards adopted by IMO and embodied in various conventions and other instruments are being considered the yardstick of applicability for many basis provisions of international law of the limitations on the law making competence in the maritime field of individual, particularly Coastal States. In verious instances, international regulatory competences have been conferred upon IMO. It is true that IMO is nowhere expressly named, but many years' discussions and negotiations have brought about a consensus that IMO is in mind in connection with safety of navigation and protection of marine environment whenever a "competent international Organization" is referred to, at least when, significantly, "Organization" is used in the singular.(*)
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It is impossible to assess very precisely the effectiveness of the numerous safety and anti-pollution measures which have been adopted by IMO since 1959. The shipping industry has altered so much that no valid comparison can be made. Nevertheless, the International Maritime Community recognises the contribution IMO has made towards Maritime Safety and the Prevention of Marine Pollution.

But there is no question that there is still an enormous amount of work to be done, and the role of IMO as the form for International Shipping Community is, if anything, even more important today than it has been in the past.

The success achieved to date through the goodwill and determined efforts of the International Community, using IMO as a forum and a platform, merely demonstrates that the past two decades in the struggle for safer shipping and cleaner oceans are indeed only the first stage in a continuing endeavour.

ANNEX - I

RESOLUTION A.76(IV)

APPORTIONMENT OF EXPENSES AMONG MEMBER STATES

THE ASSEMBLY

RESOLVES that the scale of apportionment of annual expenses among Members and Associate Members shall be based on the following principles:

Each Member shall be required to contribute:

(a) A basic assessment as determined by the percentage of its contribution to the budget of the United Nations for the relevant financial year as follows:

	$
- Less than 2%	2,000
- 2% and more but less than 10%	4,000
- 10% and more	10,000

(b) An additional assessment determined by its gross register as shown in the latest edition of Lloyd's Register of Shipping, on the basis of one share for each 1.000 tons.

Each Associate Member admitted in accordance with Article 9 of the Convention on the Inter-Governmental Maritime Consultative Organization shall be required to contribute:

(a) A basic assessment of $1.000.

(b) An additional assessment determined by its gross register tonnage on the basis of one half share for each 1,000 tons.

24 September 1965

Agenda item

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FOOTNOTES

1. Previously the Inter-Governmental Maritime Organization (IMCO). The name of the Organization was changed to become International Maritime Organization (IMO) on 22nd May, 1982, following the entry into force of an amendment adopted in 1975, to the Convention establishing the organization.

2. Edgar Gold, "Maritime Transport", The Evaluation of International Marine Policy and Shipping Law, 1981. D.C. Heath and Company, Masschusetts, Toronto, p.256.

3. Edgar Gold, - Supra at p.340.

4. Edgar Gold, - Supra at p. 260.

5. The last meeting of the Assembly (13th Session) was held in November, 1983 at IMO's Head Quarter in London.

6. For more details See - C. Alexcandrowicz, The law Making functions of the specialized Agencies of the U.N. 1973. p.72

7. IMO News - Number 4, 1983, p.3

8. Paul Stephen Demsey, - Compliance and Enforcement in International Law - Oil Pollution of the Marine Environment by Ocean Vessels p.20

9. Paul Stephen Demsey, - Supra at p. 23

10. G. Maslov, The Birth of the Legal Committee and it's importance to shipping - IMO News, Number 4, 1983.

11. Wilhelm H.Lampe - The "New" International Maritime Organization and its place in Development of International Maritime Law. Journal of Maritime Law and Commerce, Vol. 14, No.3 July, 1983 p.320.

12. Paul Stephen Dempsey, Supra p.24

13. Christoph H.Zimmerli - "The Convention Adopted Under the Auspices of IMO Dealing with Legal Matters". An Overview of Treaties already adopted of Instruments still in preparation - p.6, (unpublished Article).

14. Christoph H.Zimmerli, - Supra, p.7

15. Christoph H.Zimmerli, - "The procedure for the development, Preparation and Adoption of Conventions and Treaty Instruments and the Role of the IMO Secretariate in Exercising Depository and other Functions in relation to these Treaties." (unpublished Article), p.11.

16. Samir Mankabady - The International Maritime Organization U.K, 1984, p.11

17. Samir Mankabady - Supra, p.12

18. For more details See - Y. Sasamura - The Role of the IMO in Assisting Developing Countries. Inernational Symposium on Regional Co-operation on Oil Spill Prevention and Combating, Copenhagen, Denmark, 17-21 September, 1984.

19. For more details See Resolution A554 (13) adopted on 17 November, 1983. (Long - Term work plan of the Organization upto 1990).

20. Wilhelm H. Lampe, - Supra, p.329.

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CHAPTER III

INTERNATIONAL LAW OF MARINE POLLUTION

INTRODUCTION

As far as the framework of international law relating to marine pollution is concerned, I am going here to put emphasis on International Conventions (treaties) adopted under the auspices of IMO, plus the UN law of the Sea Convention 1982 (UNCLOS - III) without tuching upon Customary Interntional Law, which contains few rules relevant of Marine Pollution. (*)1 In doing so I am going in this chapter to talk about the International Conventions concerned with "oil" pollution from ships, without tackling, once again, any other source of marine pollution such as hazardous liquid substances, dumping, Sea-bed activities and land based pollution.

It is not surprising to find that the International Law relating to marine pollution is contained almost wholly in treaties, of which there are now a considerable number. The first of these treaties was adopted in 1954, although a draft treaty dealing with oil pollution from ships was drawn up in 1926 but was never opened for signature.(*)2 Little attention was paid to pollution at UNCLS-I apart from the general obligations imposed on states to prevent marine pollution by oil and radio-active waste, in articles 24 and 25 of the High Sea Convention, but since 1969, in response to growing international concern over pollution of the marine environment, a steady stream of treaties has been concluded (*)3.

INTERNATIONAL CONVENTION FOR THE PREVENTION OF POLLUTION AT SEA BY OIL, 1954 (OIL POL.)

The first pollutant for which international control standards were set was oil. When an oil tanker has discharged its cargo of oil, a certain amount of the oil remains clinging to the tanks. This oil has to be disposed of before a new cargo can be taken on board.

There are a number of reasons why this has to be done. If the oil remains, the risk of an explosion increases, drainage of the tanks may be impeded, the cargo capacity of the tank is decreased and the oily residue may be incompatible with the next cargo to be loaded. One way of doing this is for tankers to wash out their empty tanks at sea. In addition, empty tankers also use sea water as ballast, and this water, containing residues of oil, has of course to be pumped out before a new cargo can be taken on board. Other ships also use sea water as ballast in their empty fuel tanks, and this too is eventually pumped out. Ships which use heavy oils as fuel accumulate oily sludges which eventually have to be dispossed off. In each of these different ways oil may enter the sea. It was to deal with these forms of marine pollution that the International Convention for Prevention of Pollution at the Sea by Oil was drawn up in 1954 (*)$_4$

The principal object of the 1954 Convention was the protection of the seas from oil pollution, which was achieved by prescribing certain "prohibited zones" extending to at least 50 miles from the nearest land, within which the discharge of oil or oily mixtures (containing 100 parts of oil per million parts of mixtures or more) was prohibited. These discharge standards were tightened up by amendments to the Convention adopted in 1962, which extended the prohibited zones upto 100 miles of the nearest land, prohibited the discharge of oil mixtures by new ships of 20,000 tons gross tonnage or more, and extended the application of the Convention to tankers from 500 to 150 tons gross tonnage (Art.II.1.a).

The intention of OIL POLLUTION 54/62 was that all tankers should, as far as practicable, avoid the discharge into the sea of oily mixtures and should retain them on board for discharge into shore reception facilities (Resolution 4 of the 1962 Conference). However, the Convention had serious short-comings in that, the masters of ships of 20,000 tons gross tonnage or above were allowed to discharge oily mixtures if special circumstances made it neither reasonable nor practicable to retain them on board. The lack of shore reception facilities gave the masters justification for such discharge, and thus the special circumstances virtually became the normal circumstances. As a consequence oily mixtures were discharged outside the prohibited zones almost without restriction.

The tanker industry recognized that OIL POL 54/62 as it was written could not be enforced and considered various alternatives for tanker operations which would avoid the discharge of oily mixtures into the sea. Technical advances made it possible to improve upon the requirements of the Convention and in 1969 further amendments to the Convention were adopted which were designed to make even greater reductions in operational oil discharges.

One of the most important technical advances was the development of the system known as "Load on Top". Under this method, the oily-water mixtures resulting from tank cleaning operations are pumped into a special slop tank on board the ship. During the course of the ship's voyage the oil and water separate. The oil floats to the top of the tank and it is possible to pump the clean water into the sea and to transfer the floating oil to the slop tank. At the loading port, oil is loaded into the slop tank on top of the residual oil.(*)$_5$

Under the 1969 amendments the basic concept of prohibited zones has been removed from the Convention. Instead all discharges of oil or oil wastes from ship concerned by the Convention are prohibited, except under the following conditions:

- The total quantity of oil which a tanker may discharge in any ballast voyage must not exceed one-fifteen-thousandth of the total cargo carrying capacity of the vessel.

- The rate at which oil may be discharged must not exceed sixty litres per miles.

- No discharge of any oil whatsoever must be made from the cargo spaces of a tanker within 50 miles of the nearest land.

The 1969 amendments provided for a new form of oil record book which was designed to show the movement of cargo oil and its residues from loading to discharging on a tank to tank basis. These amendments should considerably reduce the overall total quantity of oil discharged into the sea and achieve significant progress towards the ultimate goal of complete elimination of operational oil pollution.

The 1969 amendment would, it is true, strengthen the enforcement system by requiring the flag state to report promptly not merely on the result of any proceedings, but on whether any action is being taken at all as the result of the information received. But the basic system remained unchanged. The main powers of enforcement were still left with the government of the state in which the offending ship is registered, which would, quite naturally, have less interest in discovering and confirming violations than the coastal states directly affected by such violations (*)[6]

There is no doubt that the development of the load-on-top system and the 1969 amendments to the 1954 convention have made a significant contribution to the reduction of deliberate pollution of the sea by oil. Nevertheless, the 1969 amendments are not wholly effective. This is partly because of the fact that the load-on-top system cannot always be used (for example on short-haul voyages or where successive oil cargoes are incompatible), and partly because many ports still do not have adequate reception facilities for oil wastes (*)[7]

INTERNATIONAL CONVENTION FOR THE PREVENTION OF POLLUTION FROM SHIPS (MARPOL - 1973)

Notwithstanding the foregoing action by IMO to deal with oil pollution, far-reaching developments in modern industrial practices have introduced the need for further action on a much larger scale and considerably broader in scope than has been required hitherto. This situation was recognized by the IMO Assembly when, in 1969, it decided to conven an International Conference for the purpose of preparing a suitable international agreement for placing restraints on the contamination of the sea, land and air by ships, vessels and other equipment operating in the marine environment.

The international conference, which met in London in October, 1973, adopted a new International Convention for the Prevention of Pollution from ships, 1973, which comes into force on Second of October, 1983 to replace the 1954 Oil Pollution Convention as amended. (*)[8]

SCOPE OF THE CONVENTION (Article 2)

The Convention applies to any ship of any type and size, including hydrofoil boats, air-cushin vehicles, submersibles, floating craft and fixed or floating platforms operating in the marine environment. It covers all aspects of intentional pollution and some aspects of accidental pollution from ships, but does not apply to the disposal of land general wastes into the sea by dumping within the meaning of the 1972 London Dumping Convention nor the release of harmful substances directly arising from the exploration and exploitation of sea-bed mineral resources.

The Convention consists of 20 Articles, two Protocols dealing respectively with reports on incidents involving harmful substances and arbitrations and five annexes which contain regulations for the prevention of:

- Pollution by Oil (Annex - I)
- Pollution by noxious liquid substances carried in bulk. (Annex -II)
- Pollution by harmful substances carried in packages (Annex -III)
- Pollution by sewage from ships. (Annex-IV) and
- Pollution by gaarbage from ships(Annex -V).

Annexes III, iv & V are optional, but Governments ratifying the convention must accept Annex I and II, i.e. they are compulsory.

As far as prevention of pollution by oil is concerned, I am going to put the emphasis on Annex -I, ignorring the remaining Annexes which are outside the scope of this research.

Annex-I - Prevention of Pollution by oil.

Except where otherwise stated, the regulations in this Annex apply to all tankers of 150 gross tons and above and other ships of 400 gross tons and above:

(1) The oil discharge criteria contained in the 1969 amendments to the 1954 OIL POL.Convention are maintained but the total amount of oil which can be discharged into the sea is halved to 1/30,000 of the cargo.

(2) The defination of oil is broanded to mean petroleum in any form including crude oil, fuel oil, sludge, oil refuse and refined products (other than petrochemicals).

(3) The discharge of oil is completely forbidden in certain "special areas" where the threat to the marine environment is specially greated. These include the Mediterranean Sea, the Black Sea, The Baltic Sea, Red Sea and the Arabian Gulf.

(4) Parties to the convention are obliged to provide adequate facilities for the reception of residues and oil mixtures at oil loading terminals, repair ports, etc.

(5) Oil tankers must be equipped with the equipment necessary to operate the load on top system and to retain oily residues on board until they can be discharged into shore reception facilities.

This equipment includes slop tanks, oily-water separating equipment or filtering systems, oil content meters, oil discharge monitoring and control systems, sludge tanks and suitable pumping and piping arrangements.

(6) All ships of 400 gross tons and above-including non-tankers must be equipped with oily-water separating equipment or a filtering system for the discharge of machinery space bilges.

(7) The limitations on tank size adopted in the 1971 amendments to the 1954 Oil Pollution Convention have been retained (*b. The sizes vary according to factors such as the arrangements of tanks, the fitting of double bottoms, the interposing of clean ballast tanks and so on but on normal tankers centre tanks are limited to 30,000 cubic metres and wing tanks to 15,000 cubic metres.

(8) New Oil tankers of 70,000 dead weight tons and above must be provided with segregated ballast tanks SBT of sufficient capacity to enable them to operate safely on ballast voyages without recourse to the use of cargo tanks for ballast purposes (except in very svere weather).

The fact that SBTs are not used for carrying oil means that no oil-water mixtures are produced and consequently no pollution.

(9) New subdivision and stability requirements have been introduced to ensure that tankers can survive assumed side or bottom damage to a degree which is specified on the basis of the ship's length.

(10) Tankers and other ships must carry and maintain an Oil Record Book in which all operations involving oil are to be recorded. The book can be inspected by the authorities of any state which is party to the convention.

INTERNATIONAL CONFERENCE ON TANKER SAFETY AND POLLUTION PREVENTION, 1978 (TSPP)

In March, 1977 the United States, after a series of tanker accidents in or near its coastal waters in the winter of 1976-1977, requested IMO to take International action to improve tanker safety and pollution prevention.

After intensive preparation by its technical bodies, IMO convened in February, 1978, the International Concerence on Tanker Safety and Pollution Prevention (TSPP)

The TSPP was the Culmination of ten months work by member states and the Secretariate of IMO. The purpose of the Conference was to consider proposals which had been worked out with a view to improving the provision of two conventions which had been developed four years previously but which had not yet been implemented internationally. The conference was called upon to strenghten these earlier conventions (MARPOL 1973 and SOLAS 74) in order to provide more effective regulatory regimes for oil tankers, particularly in the light of a number of serious tanker casualties experience since the two mentioned conventions were adopted. Another purpose was to modify the Conventions, so as to encourage their acceptance and ratification by governments and thus help bring the conventions into force on an accelerated basis.

The TSPP Conference adopted two instruments, commonly referred to as the SOLAS Protocol and the MARPOL Protocol. The new measures were therefore contained in two Protocols. The conference decided that the SOLAS Protocol should be a separate instrument, and should enter into force after the "parent" convention.

In the case of MARPOL, however, the conference adopted a different approach. By 1978 most of the problems preventing early ratification of the MARPOL Convention had been solved with the exception of those associated with Annex-II.

The changes envisaged by the conference involved mainly Annex-I and it was therefore decided to adopt the agreed changes and at the same time to allow Contracting States to defer implementation of Annex - II for three years after the date of entry into force of the Protocol. By then it was expected that the technical problems would have been solved.

This procedure adopted in effect meant that the Protocol had absorbed the parent convention. States which ratify the Protocol also accept the parent convention; there is no need for two separate instruments of acceptance to be deposited with IMO. MARPOL and MARPOL Protocol should therefore read as one instrument, which is usually referred to as MARPOL 73/78.

The Protocol makes a number of changes to the Convention. Segregated ballast tanks are required on all new tankers of 20,000 DWT and above (in the parent convention SBTs were only required on new tankers of 70,000 and above).

The Protocol also requires that SBTs be protectively located that is, they must be positioned in such a way that they will help to protect the cargo tanks in the event of a collision or grounding.

Another important innovation concerned crude oil washing (COW) $(*)_{10}$ which had recently been developed by the oil Industry and offered major benefits.

Cow is accepted as an alternative to SBTs on excisting tankers and is an additional requirement on new tankers.

For existing crude oil tankers, a third alternative is permissible for a period of two to four years after entry into force of MARPOL 73/78 (October, 1983). This is called dedicated clean ballast tanks are dedicated solely to the carriage of ballast water. This is cheaper than a full SBT System, since it utilizes existing pumping and piping, but when the period of grace has expired other systems must be used.

The requirements of MARPOL 73/78, as they affect COW, SBT and CBT are given in the table below:

SUMMARY OF REQUIREMENTS OF MARPOL 73/78 FOR COW, SBT AND CBT

NEW TANKERS	AT ENTRY INTO FORCE	REMARKS
Products: 30,000 DWT +	SBT / PL	
Crude: 20,000 DWT +	SBT / PL ; COW	

EXISTING TANKERS	AT ENTRY INTO FORCE	REMARKS
Crude: 40-70,000 DWT+	SBT or COW or CBT	CBT option dropped after 4 years.
Crude: 70,000 DWT +	SBT or COW or CBT	CBT option dropped after 2 years.
Product: 40,000 DWT+	SBT or CBT	

Inspection and Certification

It is generally recognized that the effectiveness of international conventions depends upon the degree to which they are obeyed and this is turn depends largely upon the extent to which they are enforced. The 1978 Protocol to MARPOL therefore introduced stricter regulation for the inspection and certification of ships.

MARPOL 73/78 now requires:-

(1) An initial survey before the ship is put in service or before an International Oil Pollution Prevention Certificate is issued.

(2) Periodical Survey at intervals not exceeding five years.

(3) A minimum of one intermediate survey during the period of validity of the IOPP Certificate.

(4) Unscheduled inspection or mandatory annual surveys must be carried out.

Under Article 5 of the main body of the Convention, any ship required to hold a certificate may be inspected by authorized officers while in the port or offshore terminals of any contracting party. Such inspection is to be limited to verifying that a valid certificate is held on board the ship, unless there are clear grounds for believing that the condition of the ship does not correspond substantially with the particulars of the certificate. In the latter case, or where no valid certificate is held, the inspecting party is to take steps to insure that the offending ship does not leave Port until it can proceed to sea without presenting an unreasonable threat of harm to the marine environment. Where such action is taken or a ship is denied entry to its ports or offshore terminals, the party concerned is to take steps to notify the flag state of the action taken.

Reception Facilities and Special Area

The existance of reception facilities for tank washings and dirty ballast is important to the solution of the problems faced by these tankers which cannot, for one reason or another operate LOT. They are also important to all ships for the handling of oily bilges, sludges and dirty ballast, and to tankers for the handling of oily residues and sluges. It will be apparent that the ports where they are most in need are those where short-hull tankers end their ballast voyages where repair yards are sited and generally where oil is loaded into tankers.

The approach taken by the 1954 Convention to discharge standards clearly made the provision of adequate reception facilities important to the success of the Convention as a whole. According to Article VIII provided that governments 'shall ensure' the provision in each main port of facilities adequate for the reception of residues from oily ballast water and tank washings remaining for disposal by ships other then tankers. While the mandatory Language was desirable, it was too much for some states which entered reservations. The provision was, however, deficient in that it required facilities only at main ports, only for ships other than tankers, and only for residues (rather than for sludges or the dirty ballast or washings themselves).

The 1962 Conference tried again, amending Article VIII in a number of ways. First, government now only had to take, all appropriate steps to promote the provision of facilities. This provided the escape route required, so that in practice no government actually had to spend any money. However, the facilties whose provision now had to be promoted expanded to include all ports being used by ships other than tankers, although the valumetric limits remained. In additions, similar provision was made for oil cargo loading terminals and ship repair ports.

This, it can be clearly seen, was not enough, for even today the provision of reception facilities is inadequate. The opportunities of 1969 and 1971 were not taken, and it was left to the 1973 Conference to produce some realistic standards. The failure to make the provision of these facilities mandatory is the failure of the international community of states. Had these facilities been available from 1967, no ship would today have any real excuse for discharging oil into the sea.(*)
11

The MARPOL 73/78 Convention standards are contained in regulations 10(7) (Special areas) and 12 (other areas) of Annex. I. The main provision is regulation 12 is as follows:-

(1) Subject to the provisions of Regulation 10 of this Annex, the Government of each party undertakes to ensure the provision at oil loading terminals, repair ports, and in other ports in which ships have oily residues to discharge, of facilities for the reception of such residues and oily mixtures residues to discharge, of facilities for the reception of such residues and oily mixtures as remain from oil tankers and other ships adequate to meet the need of the ships using them without causing undue delay to ships.

Paragraph (2) and (3) go on to detail the capacity of facilities and the ports where they are to be provided. Amongst others, four of the problems associated with LOT and which required adequate reception facilities for their solution are given special attention. The capacity must basically be that capable of accepting what cannot be discharged in accordance with the discharge standards of the convention.

Even higher standards are enacted by Regulations 10(7) for special areas, the main difference being that all oil loading terminals and repair ports and all ports handling dry cargo ships must be provided with adequate reception facilities, not just to take residues left after lawful retention-on-board techniques have been operated, but to take all the dirty ballast and tank washing waters. This is a natural complement to the almost absolute prohibition on all discharges within special areas.

Some industry observers, and some IMO members, hoped that the IMO might relax the MARPOL Special Area requirements due to the lack of shore reception facilities at a number of terminals. Arguments have been put forward that operational discharge should be allowed outside coastal waters until the oil exporters provide the required facilities. While the lack of reception facilities may be the result of an oil-exporting state not being a party to the Convention, or simply not meeting its obligations under the convention the main point was that there was no penalties involved... nor means for the ships of MARPOL States to achieve compliance.

As a result, the French have already said that they will not be bound by Mediterranean Special Area rules if the ports concerned lack shore reception.(*)[12]

Some delegations at the MEPC supported the Oil Companies International Marine Forum (OCIMF) plea for a waiver; they claimed the situation was similar in the Red Sea and Gulf Area. These countries also stressed that adequate reception facilities were demanded in MARPOL 1973 and that there had been an original deadline for their construction by January, 1977.

A certain amount of impatience can be understood. Although this issue has received much attention in recent years, a great deal of time has been lost.

In early 1980, for example, the IMO received a report which set out the true position in the Mediterranean, where it was found that less than half of the major oil terminals had adequate shore reception. Of 19 major loading terminals visited, only nine had deballasting stations.

The experts responsible for the IMO-Commissioned report put the cost of a typical reception facility at some $ 2.5 million, depending on local circumstances. They pointed out that this capital cost is small compared with the value of oil exported. But they recognised, too, that there would be problems in this area. Their answer amounted to a proposal that international banking agencies should give priority to requests for help in financing construction of shore-reception plants.

A number of IMO delegations have produced studies which demonstrative that reception facilities can be self-financing and in favourable circumstances make a healthy profit from the recovered oil.

One such initiative has come from International Association of Independent Tank Owners. Intertanko has suggested that elderly tankers should be converted into floating waste oil reception facilities, as an alternative to shore installations; experience has shown that existing tankers can be converted to satisfactory temporary facilities at a fraction of the cost of land based plants (*)13 .

Other measures- such as carriage of fresh water ballast to the Arid oil producing nations could boost interest in the construction of reception plants (*)14

The Impact of MARPOL 1973/78

It is expected that MARPOL 73/78 will have a great and beneficial impact upon marine pollution in the years to come, although it has already had a considerable influence upon tanker design and operations.

Most tankers built since 1973 have conformed to many features of the original MARPOL Convention for example, SBTs (for tankers of 70,000 dwt and above), the limitation on tank size and other structural arrangements have generally been followed, since new ships are defined by calendar data and comformity to international standards is an important bonus when it comes to selling a ship. Equipment, such as oily-water separators, is also widely used.

The 1978 Portocol has had an even greater impact, partly because it was clear that the modified instrument would enter into force comparatively quickly.

The definition of new ships and new tankers as defined in MARPOL and the 1978 Protocol are as follows:-

Particulars	New Ships	New Tankers
Contract data after	31 Dec.1975	1 June,1979
Keel laid after	30 June.1976	1 Jan, 1980
Delivered after	31 Dec.1979	1 June,1982

This means that any ship which meet the above definition and do not conform to MARPOL 73/78 requirements will not be able to operate next year until they have been modified a very expensive and time consuming job.

Because of this, virtually every ship built after 1976 already confirms to MARPOL 73/78 requirements (and also, incidentially, to the requirements of the SOLAS Protocol, since the same new tanker definition applies to that instrument as well).

The cost of carrying out the alteration required by MARPOL 73/78 could be high enough to make it uneconomic to convert same existing ships, particularly in view of the generally depressed state of the oil market today.(*)$_{15}$ However, the ships which are scrapped will generally be the older onces, so that the effect will be to raise standards of the world fleet as a whole.

It is also likely that tanker operating costs will rise because of SBT, for example, ships will be able to carry less oil.

On the other hand, MARPOL 73/78 has already helped to make the seas cleaner, and in the future its benefits will be even greater.

Even so, entry into force of the convention would not be the end of the story.

It is generally agreed that it would be desirable to develop a unified and authoritive interpretation of MARPOL 73/78 and in certain cases to develop amendments. IMO has been working on the interpretation of various parts of MARPOL 73/78 which may require clarification or could give rise to difficulties in implementation. The Marine Environment Protection Committee has agreed on a set of unified interpretations and a number of amendments which it intends to adopt formally.(*)$_{16}$

LIABILITY AND COMPENSATION FOR OIL POLLUTION DAMAGE

INTRODUCTION

In Summer 1967 after the "Torrey Canyon" disaster of the English Coast, intensive discussions and negotiations have taken place in the field of International legislation for oil pollution damage. These activities have been rather successful since they resulted in the consultation of four international instruments dealing with compensation for oil pollution damage. All these instruments are at present in force.

The international legislation on civil liability for oil pollution damage consists of two entirely separate schemes. One scheme is the system of civil liability and compensation set up by international conventions adopted at IMO Conferences. The other scheme is a system of voluntary agreements concluded by the industry. These two schemes, although entirely separate in their applications, look very much a like; in facts the voluntary scheme internationally mirrors the scheme based on the IMO Conventions.

The two system follow the same pattern. They consist of two different parts each; regulations dealing with the shipowner's liability and, in addition, a fund providing for supplementary compensation; this fund is financed by the oil industry.

In the scheme based on international conventions, the "IMO Scheme", the ship owner's liability is dealth with in the:

- International Convention on Civil Liability for Pollution Damage, 1969 (Civil Liability Convention, CLC)

and the additional compensation provided for by the Oil Companies is dealt with in the :

- International Convention on the Establishment of an International Fund for Compensation for oil Pollution Damage, 1971 (Fund Convention)

The corresponding voluntary Agreement are the:

- Tanker Owner's Voluntary agreement concerning Liability for Oil Pollution Damage (TOVALOP), dealing with the shipowner's liability, and the

- Contract Regarding Interim Supplement to Tanker Liability for Oil Pollution (CRISTAL), dealing with the cargo owner's additional compensation.

This system of the four different instruments can be illustrated by the following table.

	Shipowner's Liability	Additional Compen-sation provided for by oil Industry
"IMO Scheme (based on Inter-national Conven-tion.	C L C	Fund Convention
Voluntary Industry Scheme	TOVALOP	CRISTAL

The IMO Scheme

THE CIVIL LIABILITY CONVENTION, 1969

Background Development

There was no International Convention dealing with liability for Oil Pollution from ships at the time of the Torrey Canyon incident. This meant that if oil from a ship polluted the shore of one or more states, the question of whether or not an individual or governmental authority could sue for his resulting loss, and if so, in what state, was in practice governed largely by national law. This presented sever problem in many states where liability was based on negligence which the plaintiff had to prove, and where jurisdiction against a foreign defendant shipowner could only be established if the wrong was held to have occurred in the territory of the state (rather than one the high seas). Further, there was no legal obligation to insure against oil Pollution liabilities in those days and so if the defendant happened to be the uninsured (or inadequatley insured) foreign owners of a single ship which had sunk in the incident causing the damage, the claimant would probably give up at the start. Even if things were not so depressing, the shipowner could limit his liability by law, if the jurisdiction in which the claim was brought was a party to the International Convention Relating to limitation of the liability of Owners of Seagoing Ships, 1957. (" the 1957 Brussels Convention") or to an even earlier 1924 Limitation Convention, or if there was a ship owners' limitation law of purely domestic origin. Furthermore, the limit for all property claims of every type arising from the incident was relatively small-for the largest ship at the time the limitation fund would not have been more than about US$ 8 million and for the more common size of tanker would have been half that, or less.

The Torrey Canyon incident highlighted those realities and IMO provided a forum for the nations to meet and discuss what was to be done about it. In fact, movement was remarkably swift, and a Diplomatic Conference was held in Brussels in November, 1969 to adopt two new International Conventions,one on liability and one concerning the right of states to intervene in a casualty which threatens oil pollution damage (we will discuss it in the following pages). The former Convention, the International Convention on Civil Liability for Oil Pollution Damage, 1969, or " CLC " as it is colloginally known - is of the utmost importance and has revolutionised the law not in those states which have adopted it but, by providing a model for domestic legislation, also in some states which have not adopted it.(*)17.

MAIN PRINCIPLES

(1) The Geographical Scope

Article II limits the geographical scope of the Convention: 'This convention shall apply exclusively to pollution damage caused on the territory including the territorial sea of a Contracting State and the preventive measures taken to prevent or minimise such damage.'

The sole criterion for the geographical scope of application of the Convention is, therefore, the place where the damage occurred. The nationality, domicile and residence of the defendant are irrelevant.

There is one area excluded by Article II which is becoming increasingly important. Offshore installations, such as rigs and single buoy moorings, and possibly mollusc beds, are frequently outside the territrial sea of the state under whose control they lie .

Reasonable preventive measures taken to prevent contamination to them, wherever such measures are taken, would seem to be excluded by Article II when they are outside the territorial sea, for such places do not qualify as the 'territory' of the state in question. However, offshore installations and single buoy moorings can rarely suffer serious damage from an oil spill, and mollusc beds are rarely below the high seas.

The most important areas not attracting the attention of the rule of liability are as follows:-

(1) Oil escaping from river and Lake vessels, offshore installations, and installations and pipelines.

(2) Oil escaping from dry cargo ships and tankers not carrying oil in bulk as cargo.

(3) Damage caused by non-persistent oils.

(4) Damage suffered by installation outside the territory or territorial sea of a contracting state and all damage suffered on the territory or territorial sea of a non-contracting state.

(5) Claims against salvors and bareboat charterers (*)[18]

(2) Liability of the Owner

By Article III (1), it is the owner and the owner alone who is liable. Owner is defined in Article 1 (3) as the person or persons registered as the owner of the ship or, in the absence of registeration, the person or persons owing the ship.

However, in the case of a ship owned by a State and operated by a company which in that State is registered as the ship's operator, "owner" shall mean such company. It is therefore clear that the Convention places no liability whatsoever either upon any person salving the ship from which oil has escaped, or upon the owner's servants such as the master and crew. However, the owner is liable irrespective of his residence or domicile, or of the state in which his ship is registered.

The channelling of liability is, however, incomplete in so far as the convention does not deal with the question of liability of persons other than the owner or his servants and agents. This is important since the liability of e.g. a bareboat-charterer is not dealt with. It is, therefore, up to the national law to decide whether a bareboat - charterer is liable under domestic law in addition to the liability of the owner under CLC.

Problems arise and there seem to be different interpretations in national laws implementing the CLC whether a salvor has to be considered as an " agent " under the Convention. But as the intention of the Convention was to channele the liability upon the owner one should think that it all ows for a broad interpretation of term "agent" and thus exclude the salvor from liability under the CLC (*)19

(3) Strict Liability

Article III (1) provides that 'Except as provided in paragraphs 2 and 3 of this Article, the owner of a ship at the time of an incident, or where the incident consists of a series of occurrences at the time of the first such occurrence shall be liable for any pollution damage caused by oil which has escaped or been discharged from the ship as a result of the incident.

Paragraph 2 of Article III, However contains certain exceptions which are meant to represent uninsurable risks. These exceptions contained in sub-paragraphs (b) and (c) were known at the conference as "the British Exceptions". They permit a shipowner to escape liability if he proves facts to support one of three defences.

- That the damage resulted from an act of war, hostilities, civil war, insurrection or an exceptional, inevitable and irresistible natural phenomena;

- That the damage was wholly caused by an act or omission done with intent to cause damage by a third party;

- that the damage was wholly caused by negligence or other wrongful act of any Government or other authority responsible for maintenance of lights or other navigational aids in the exercise of that function.

These three defences vary considerably. The latter, negligence of a lighthouse authority, etc, is of small practical application. Even where it might apply, it will be difficult for an owner to show, affirmatively, that the damage was due entirely to the failure on the part of the authority. Similarly, the second defence is of little practical significance. It is confined to the malicious act of third party and employees agents of the owners are excluded. The first is the most important and it has two aspects. If the damage "resulted from" (much less strict language than "due wholly to") an act of war, etc then the defence is proved, Secondly, if it resulted from a natural phenomenon a defence is available. However, here the strictness creeps back. The national phenomenon, the storm, tidal wave etc., must not only be exceptional, but inevitable and irresistible. So the owner must show that it was impossible to take any action to reduce the effect of the storm that the vessels could not have taken shelter anywhere, that no measures could have been adopted to reduce the affect of the "natural phenomenon". which might be difficult (*)20

(4) Limit of Liability

By Article V (1), the limits to which a shipowner may limit his liability under the Convention in respect of any one incident are an aggregate amount of 2,000 francs for each ton of the ship's tonnage. However, this aggregate amount shall not in any event exceed 210 million francs'. The franc referred to is the Poincare' franc and was adopted at the conference in the hope that it would ensure uniformity in the real value of a fund, in whichever country it was established. In earlier conventions there had been problem in deciding whether or not this amount should be converted into the currency of payment at the official rate or at a free market rates and so the official rate was chosen. Article V (9) now provides that the amount mentioned in (Article V (1)) shall be converted into the national currency of the state in which the fund is being constituted on the basis of official value of that currency .

Unfortunately the world currency crisis which lead to the major currencies floating on the markets destroyed the efficency of this formula, and so at a Conference held in London from 17 to 19 November, 1976, there was adopted a Protocol to the Convention which alters the unite of account from Poincare' francs to the Special Drawing Right (SDR) as defined by the International Monetary Fund (IMF). However, if a state which is not a member of the IMF cannot under its own law convert the SDR into local currency, the Poincare' franc may be used and the conversion, shall be made in such manner as to express in the national currency of the Contracting State as far as possible the same real value' for the limitation amounts as expressed in the Protocol in SDRs. The amounts of 2,000 francs and 210 million francs in Article (V) 1 of CLC are expressed in SDRs by the Protocol as 133 and 14 million respectively .(*)

The limitation figures of the CLC are twice as high as the limitation for property damage (which includes pollution damage) under the 1957 limitation convention. This earlier convention is still applicable in states not parties to the CLC or in a case where a ship flying the flag of a state party to the 1957 Convention causes pollution damage to a State being party to both the 1957 and the 1969 Convention.

The owner is deprived of his right to limit his liability if the incident occurred as a result of his actual fault or privity. So far, no tanker owner has been held to have an unlimited liability under the CLC, but the possibility of breaking the limitation gives rise to many practical difficulties. The theoretical possibility of unlimited liability has always to be investigated very carefully. But this is only in the interest of the fund and CRISTAL, since the victims get their additional compensation from either the Fund or CRISTAL.

(5) Compulsory Insurance

Where more substantial quantities of oil are carried, there is a more far-reaching requirement, the owner of a ship registered in a contracting State and carrying more than 2,000 tons of oil in bulk as cargo shall be required to maintain insurance or other financial security, such as the guarantee of a bank or certificate delivered by an international compensation fund in the sums fixed by applying the limits of liability prescribed in Article V, paragraph I to cover his liability for pollution damage under this Convention (Article VII (1)). The actual occurrance of an incident is not necessary in those circumstances. This is called compulsory insurance.

The compulsory insurance is not a new concept in international or muncipal law. The introduction of the requirement that the carriage of substantial quantities of oil be automatically covered by a liability insurance has introduced an additional factor in favour the concept of limiting the shipowner's liability.

At least in theory, any risk can be insured. It is however, obvious that the less it is possible to determine in advance potential risk exposure, the higher the cost of insurance coverage for such risk will become. The insuring of high risk or of unpredictable events which might entail damage on a large scale without predetermined ceiling is likely to be subjected to very high premiums. The argument is therefore made for the need to establish limits not just as a protection of the shipowner, but in light of the need of "insurability". This is a factor which is mainly of a practical nature; it is considered to be desirable to set limits of liability at a level at which it will be possible for the shipowner to find insurance and to take out such insurance at a cost which will be feasible and not disproportionate to the overall cost of his operation. Where, such as here, insurance is compulsory, the criterion of insurability becomes particularly important. If the insurance premiums were considered commercially prohibitive and yet the taking out of the insurance was mandatory this could well have a considerable impact on the total volume of maritime carriage of polluting substances. In sum, the three concepts of limitation of liability, insurability and compulsory insurance are closely interlinked and affect each other.

The actual existance of satisfactory insurance cover of ship is verified by means of a system of certification. A state party to the Convention is required to prevent a ship flying that State's flag from Sailing if it does not possess a valid certificate testyfying that it is adequately insured. Noteworthy is that the Convention has also a direct effect on ships which are not registered in a State party to the Convention; it requires Contracting States to impose this insurance requirement on all ships carrying substantive quantities of oil if they enter or leave their port or an-offshore terminal in their territorial sea, even if the ship is registered in State which is not a party to the Convention. (*)22

DEFINITIONS AND THE SCOPE OF THE CONVENTION

In addition to these five main principles, some of the definitions contained in Article I of the CLC ought to be explained as they contain important provisions concerning the scope of the convention.

(1) The convention applies only to pollution caused by Ships. A ship as defined in Article I(1) of the convention is only a sea-going vessel "actually carrying oil in bulk as cargo". This definition does not only exclude all general cargo ships and bulk carriers other than oil carriers, but also tankers on ballast voyages.

(2) The restrictions as to the application of the convention go even further as the oil that must be carried as cargo is defined as "persistent Oil". The convention does not contain a definition of " persistent oil " and this lack of precision creates in fact a lot of problems. It is not even clear whether the application of the application of the Convention is restricted to hydrocarbon mineral oils plus whale oil as the specific reference to whale oil may have to be interpreted in such a way that a restriction to mineral oils was not intended. As unclear as the interpretation of the term "persistent oil" is , it certainly has the effect of excluding all clearly non-persistment oils from the scope of the Convention.

(3) And yet another restriction is contained in the definitions. The convention stipulates liability for pollution damage which is defined as loss or damage caused "by contamination". This excludes damage caused by explosion or fire. Consequential economic loss suffered after a pollution incident, if not too remote, is probably covered. This, however, is not beyond doubt, it is question of interpretation of the word "loss".

Ultimately, it well very much depend on the law of the State where the damage occurred which types of damage are covered. Only the mentioned of the key word "ecological damage" highlights the problems.

(4) It is also unclear whether pre-spill preventive measures are covered. Some writers take the view that they are covered but the prevailing view seems to be that they are not covered by the CLS. This leads to the stange result that under the CLC compensation can only be paid if some persistent oil, be it only one ton or less, is spilt. Potential claimants become, therefore, interested in an actual spill of oil after an incident instead of trying to avoid a spill by all means. (*)[23]

The CLC has 55 Member States as at 12 August, 1984.

INTERNATIONAL CONVENTION ON THE ESTABLISHMENT OF AN INTERNATIONAL FUND FOR COMPENSATION FOR OIL POLLUTION DAMAGE, 1971 (FUND CONVENTION)

It was an integral part of the compromise reached at the 1969 Conference between States supporting liability for the shipowner and those supporting liability for the cargo owner that there should be another conference to place additional liability on cargo interests in the form of a fund of some kind. The result was that in December, 1971, The nations met again in Brussels and adopted a further instrument, the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971. or "The Fund Convention" for short.

The fund Convention was elaborated as a supplementary convention to the CLC. Only those states who have become contracting States of the CLC can become Members of the Fund Convention.

The main functions of the Fund Convention are to provide supplementary compensation to those who cannot get full and adequate compensation for pollution damage, and to indemnify the owner for a portion of his liability under the CLC.

THE MAIN PROVISIONS OF THE CONVENTION

Article 2 establishes an International Fund for Compensation for pollution damage, to be named "The International Oil Pollution Compensation Fund "(IOPC Fund)", which shall be recognised in each contracting state as a legal person capable under the laws of that state of assuming rights and obligations and of being a party in legal proceedings before the courts of that state.

The provisions of the Fund Convention are directly tailored to supplement those of CLC, so that wherever possible, the same definitions are adopted, and the principle on which the provisions proceed is generally speaking, that where CLC liability ends, Fund liability begins. The two fundamental compensatory provisions are Articles 4 and 5. Article 4 seeks to compensate plaintiffs (Subject to a maximum limit) for pollution damage which they have suffered but for which they have been unable to recover full and adequate compensation under CLC for specified reasons and also to a certain extent to reimburse shipowners for their voluntary clean-up expenses. Articles 5 seeks to remove from the shipowner's shoulders the slice of his liability under CLC between 1,500 and 2,000 francs per ton, subject to maximum limits. Article 6 to 9 contain supplementary provisions on time limits, place of litigation, enforcement of judgements and subrogation.

The fund acquires its fund under Article 10 from contributions raised levying crude oil and fuel oil received by persons in the territory of contracting states; hence, the people who pay for the compensation distributed by the fund under Article 4 and 5 are the oil companies and not the governments who are party to Convention (unless, of course such a government receives contributing oil itself and in its own name).

It is in this way the convention distributes the overall burden of pollution damage between the shipowner and cargo interests.

Article 11 to 36 deal in detail with administrative matters. Article 37 to 48 contain the final clauses of which some of them dealing with eligibility and entry into force.

30 STATES ARE MEMBERS OF THE FUND CONVENTION
AS AT 12TH AUGUST, 1984

SUPPLEMENTARY COMPENSATION

Fund pays additional compensation in respect of pollution damage caused on the territory of a Contracting State to the Fund Convention, it pays for the following reasons:-

(a) If there is no liability for pollution damage arises under the CLC, e.g. because the owner can invoke one of the exemptions under Article III of that Convention; or

(b) If the owner is financially incapable of meeting his obligation and any insurance is insufficient to satisfy the claims for pollution damage, or

(c) If the damage exceeds the owner's liability under the CLC.

The IOPC Fund is relieved of its obligation to pay supplementary compensation if it proves that the pollution damage resulted from an act of war or other hostilities or if it was caused by a spill from a warship, or if the claimant cannot prove that the damage resulted from an incident involving one or more ships. This latter case of the IOPC Fund's exemption from its obligation refers to a spill of oil from an unidentified source.

The IOPC Fund's obligations in case where there is no liability of the ship owner under the CLC does not seem to be a very practical care but the two other cases (B) and (C) above are of great importance.

Tankers carrying less than 2,000 tons of oil in bulk as cargo are not obliged to have insurce cover, so that the situation may arise that an owner of a small ship does not only have no insurance cover but may also be economically incapable of meeting his obligations under the CLC, if his ship is involved in an incident and may have been a total loss after that incident. Experience shows that the liability of small ships under the CLC is very often insufficient to cover the pollution damage caused by such ships. The additional cover provided by the Fund Convention in these cases is necessary to compensate pollution damage fully and adequately. The fund provides compensation upto an amount of (US$ 47m) 675 million francs (including the ship owner's liability, if any). This amount can, by decision of the Fund's Assembly, be raised up to an amount of 900 million francs (US $ 63 m). It seems that this amount would have been sufficient to cover the pollution damage of all tanker incidents that have happened so far (except perhaps for the "Amoco Cadiz" where there is no indication yet of the amount of pollution damage).

INDEMNIFICATION TO THE SHIPOWNER

Under Article 5 of the Fund Convention the Fund pays to a shipowner who has been held liable under the CLC an amount of 500 francs (US$ 35) for each ton of the ship's tonnage or 85 million, francs (US$ 6 million) whichever is the less. This means that the Fund relieves the owner of a part of his liability under the CLC which is between 25% and 40%.

The fund is exonerated from its obligations to pay indemnification to the ship owner if it proves that the damage resulted from the wilful misconduct of the owner or if it proves that, as a result of the actual fault or privity of the owner, his ship does not comply with the following International Conventions:-

- The International Convention for the prevention of Pollution of the sea by Oil, 1954 as amended in 1962.

- The SOLAS Convention, 1960
- The Load Lines Convention 1966. and
- The International Regulations for preventing collosions at sea, 1966.

The Fund Convention contains provisions to replace these Conventions by new instruments which have entered, or will later enter into force.

CONTRIBUTION TO THE FUND

The payment of contributions or indemnification as well as the administrative expenses of the IOPC Fund are financed by contributions levied on any person who has received contributing oil exceeding 150,000 tonnes in one year in a Member State of the Fund Convention.

Contributing oil is defined as crude oil and heavy fuel oil. This oil is counted for contribution purposes each time it is received at ports or terminal installation in a Member State after carriage by Sea. The place of loading is irrelevent in this context; e.g. the oil may be imported from abroad, carried from another port in the same state or transported from an offshore production rig.

A Member State required to communicate to the Director of the IOPC Fund the name and address of any person who is liable to contribute to the IOPC Fund, as well as the quantity of contribution oil received by such a person.

There are at present about 350 persons contributing to the IOPC Fund, most but by no means all of them being oil Companies. The contracting States in respect of which the highest contribution are being made are Japan (31.8%), Italy(15.8%), France (12.6%) Netherland (8.9%) and the United Kingdom (8.9%) i.e. only five Members of the IOPC Fund pay 79% of the contributions.

Six states do not pay any contributions either because no contributing oil is received in these States or because the quantity of oil received by any person in that state is below 150,000 tonnes. Eight States pay less than 1% of the contributions each.

There are two different types of contribution under the Convention, the initial and annual contributions.

Initial Contribution

Initial Contributions have to be paid in respect of all Contracting States within three months after the entry into force of the convention for that State on the basis of a fixed amount on each ton of contributing oil received. According to a decision taken by the Fund's Assembly at its first session in November, 1978 this amount is 0.04718 (gold) francs (US$ 0.003) per ton of contributing oil.

Annual Contributions

Annual Contributions will be raised if the Funds working Capital falls below an amount reasonably required to meet the administrative expenses and anticipated claims. They can be raised only after the Fund's Assembly or Executive Committee has so decided. The contributions are based on the quantities of contributing oil received during the year preceding that in which the contributions are raised.

Requests for payments of contributions are made by the Director of the Fund to the persons liable for contributions. The payments have to be made to the Fund directly. Each Contracting State has, however, the possibility to assume itself of the obligations that are incumbent under this Convention on persons liable to contribute. In this case invoices are sent to the competent authorities in that State and have to be paid by them.

CLAIMS

Claims against the IOPC Fund can be made directly by all individual persons. The claims shall, to the extent possible, state the following particulars:-

(a) the name and address of the claimant and his representative, if any;

(b) the date, the place and specific details of the incident;

(c) the type of pollution damage and the place where it was experienced;

(d) the amount of the claim.

The Internal Regulations of the fund provide the Fund's Director with the authority to settle claims upto an amount of 25 million francs without the prior approval of the Assembly or the Executive Committee. In exceptional cases the Director is entitled to make provisional payments to victims if in his view this is necessary in order to mitigate under financial hardships to these victims (*)24

REVISION OF THE CLC AND FUND CONVENTION

Soon after the establishment of the IOPC Funds the Assembly adopted a Resolution, at its second session in 1979, requesting IMC to consider the desirability of revising the CLC and fund Convention, looking into the adequacy of the limits laid down by these conventions as well as the problems associated with small vessels and with indemnifying the shipowner.

Responding to above request, IMO deliberated the revision of the CLC and Fund Convention, resulting in the proposal of draft tests for two protocols to revise the CLC and Fund Convention. A deplomatic Conference was convened by IMO in April/May, 1984 in London.

MAIN AMENDMENTS

The following are the main amendments of the 1984 protocols:-

(1) GEOGRAPHICAL SCOPE OF APPLICATION

Following the development of UNCLOS, which adopted a new Convention on the Law of the Sea, the geographical scope of application of both the 1984 CLC and Fund Convention are extended to the exclusive economic Zone (EEZ). As a result, pollution damage suffered in the territory, the territorial Sea and the EEZ, of a Contracting State is to be covered by these Conventions. Regarding preventive measures, there will be no territorial limit of application, as is the case in the present Convention, if the measures are taken to prevent damage to the territory, the territorial sea and the EEZ.

(2) NEW LIMIT OF OWNER'S LIABILITY

In order to update the limitation figures of the present CLC, the limit of the owner's liability is considerably increased. A new concept of minimum liability for owners of small vessels introduced. The new Limitation amounts are as follows:

(a) For a ship not exceeding 5,000 GT, a minimum liability of 3 million SDR "Special Drawing Rights" (about US$ 3 million) is set.

(b) For a ship of between 5,000 and 140,000 GT, the limit of liability is 3 million SDR, plus 420 SDR (US$ 438) for each additional ton over 5,000 GT.

(c) For a ship exceeding 140,000 GT, the limit of liability is set at 59,7 million SDR (US$ 62 million).

(3) NEW LIMIT OF IOPC FUND'S COMPENSATION

The maximum compensation payable by the IOPC Fund is raised to 135 million SDR (US$ 141) including the compensation payable by the shipowner. This represents a three-fold increase in the limit, when compared with the current level of 45 million SDR Compensation under the 1971 Fund Convention. Further more, the 1984 Fund Protocol provides a mechanism according to which there is an automatic increase of the above limitation figure to 200 million SDR (US$ 209 million) when the total quantity of contributing oil received by contributors in three Members States exceed 600 million tonnes.

(4) ABOLITION OF INDEMNIFICATION

The indemnification of owners payable under the 1971 Fund Convention is abolished in the 1984 fund protocol, in the light of the new balance of liability between shipping and oil interests under the new Convention.

(5) ABOLITION OF INITIAL CONTRIBUTION

The present daul financing system, through initial and annual contributions, is amended so that the IOPC Fund 1984 will be financed exclusively by annual contributions.

(6) TREATY LAW PROBLEMS

It has long been pointed out that the unique relationship between the 1969 CLC and the 1971 Fund Convention would cause complicated treaty law problems in amending these Conventions. It is essential that the close relationship of the separate treaty instruments under the present Conventions should be retained, that the existence and coverage of the compensation schemes should not be interrupted and that a smooth and quick transition from the present regime to the 1984 regime should be ensured.

The protocols adopted the " phased-in " approach as being best suited for the above purpose, as well as securing the maximum flexibility in meeting the requirements of the various ways of ratifying or acceeding to the new Conventions. This system means that, for a transitional period, the original Conventions of 1969 and 1971 as well as the two 1984 Conventions are applicable.

(7) OTHERS

The provisions are amended so that 1984 CLC and the 1984 Fund Convention will cover spills from unladen tankers, and skills from combination carriers. Pure threat removal measures, which are not covered under the present Convention, will be covered to the extent that they are taken to present pollution damage after an incident which comes a grave and imminent threat. The definition of "pollution damage " is refined so that speculative claims for damage to the environment are excluded from the definition.

THE VOLUNTARY INDUSTRY SCHEMES

(1) TOVALOP

The Torrey Canyon incident produced a great improvement in the International Law relating to Oil Pollution; it also paid its part in changing the practice of tanker owners and in influencing their attitudes to the problems. Following the incident, it was felt that constructive action was needed to fill the gaps in the law, and that waiting for the relevant provisions of international treaties to enter into force was not good enough, both from points of view of the plaintiff, who needed to respond to public openion positively and to arrange insurance for any removal costs he voluntarily incurred.

Consequently on 7 January 1969 the Tanker Owner Voluntary Agreement concerning Liability for Oil Pollution (TOVALOP) was signed. The agreement came into operation on 6th October, 1969, when 50% of the tankers of the world (as measured by gross registered tonnage) became subject to it. Now, parties to TOVALOP are owners of almost 97% of the world's tanker tonnage.

TOVALOP as revised with effect from 1 June 1978 has slighly lower limitation amounts. The limits were raised from US$.100 per ton or $.10 million (whichever the less) to $ 160 per ton or $ 16.8 million (whichever the less).

The agreement contains two limbs. The first is clause IV, by which each party to the agreement undertakes that, subject to the terms and conditions of the agreement, he will assume liability for pollution damage caused by oil which has escaped or which has been involved in an incident, and that he will also assume liability for the cost of threat removal measures taken as a result of the incident.

Liability will not be assumed (either for pollution damage or threat removal measures) if the incident resulted from any of the circumstances described in Article III (2) of CLC, or if it caused pollution damage anywhere in the world for any part of which the owner being faced with a double liability under the CLC and TOVALOP if an accident caused pollution damage to a State Party to the CLC and at the same time to another State that is not a member of the CLC. This provision in the TOVALOP agreement does not, however, prevent the owner from being liable under the CLC in one State and under national law in another State.

The second limb of TOVALOP, contained in Clause VI, insures that the tanker owner is insured against the liabilities which he has volantarily assumed, and also ensures that he can be reimbursed for any preventive measures taken after a spill and for any threat removal measures taken before it. Furthermore, the owner shall exercise his best efforts to take such measures.

Each party must establish his financial capability to fulfil his obligations to the satisfaction of the International Tanker Owners' Pollution Federation Limited, a company set up to administer the agreement. This may now be done by entering vessels in a specially formed mutual insurance association, the International Tanker Indemnity Association Limited, (ITIA) or in a conventional Protection and Indemnity Club.

A most important characteristic of the agreement is that the company set up to administer it ('the Federation) does not itself provide any insurance. Hence, when a person files a claim in response to being informed by the Federation that the tanker involved in subject to TOVALOP, any payment made comes from the insurer and not the federation.

In several aspects, TOVALOP goes beyond the CLC, First of all, TOVALOP includes barboat charterer in its agreement, by providing that he shall be deemed to be the owner. However, it is not clear from Clause VIII (E) that a claimant could not accept a TOVALOP offer from the bareboat charterer and then sue the registered owner under national legislation .

TOVALOP furthermore provides that pre-spill preventive measures are covered by the agreement. It allows a person who takes reasonable preventive measures while no oil has yet been spilled to recover his costs in many situations, whether he be the tanker owner or the potential victim, whereas CLC would neither reimburse such costs nor allow them to rank against a limitation fund set up because a spill subsequently took place.

The definition of "oil" is clearer than in the CLC as it refers explicity to hydrocarbon mineral oil only, while the CLC includes whale oil and does not say whether oils other than hydrocarbon mineral oils and whale are covered or not.

There are, of course, minor differences, which do not call for comment here.

TOVALOP is likely to be voluntarily terminated one day, when CLC becomes so widespread in its application as to obviate the need for TOVALOP, but until that date the attractiveness to a state, particularly one with an exposed cost but a small fleet, of not becoming a party to CLC must be admitted. This is regrettable because it could mean that the global application of CLC will be delayed. The irony would be that the delay would be caused by the existence of an industry-run alternative. (*)25

(2) CRISTAL

The contract Regarding an Interim Supplement to Tanker Liability for oil Pollution (CRISTAL) was adopted on 14 January, 1971 and came into effect on Ist April following, when oil companies receiving over 70% of the world's crude and fuel oil had become parties.

CRISTAL is a voluntary scheme adopted originally to compensate only the victims of oil pollution who had obtained in-sufficient compensation under existing laws or under TOVALOP.

CRISTAL sets up a fund which is held by the Oil Companies Institute for Marine Pollution Compensation Limit, a company incorporated in Bermuda, and it is to this Company and to each other that the parties owe their duties. The Institute collects the funds necessary to meet claims made under CRISTAL by raising a levy from the oil company parties based upon their receipts of crude and fuel oil. This fund will pay out to compensate any person (either private or governmental) who has suffered pollution damage or who has taken threat removal measures as a result of an incident. There are, however, numerous pre-requisites, exceptions and qualifications to this rule, all of which are contained in Clause IV.

CRISTAL becomes liable for pollution damage if the oil involved is owned by an oil company party to CRISTAL and if the tanker from which the oil escaped was entered in TOVALOP.

The Institute is obsolved from liability altogether, if any of the events described in Article III (2) of CLC caused the incident.

CRISTAL is designed to compensate those who have suffered pollution damage only in so far as they have been unable to get adequate compensation from other specified sources - like Fund Convention.

CRISTAL's liability is limited to us $36 million (including the tankr owner's liability under CLC or TOVALOP). This is considerably less than the amount payable under the Fund Convention. Indemnification to the owner is paid in an amount of $40 per ton of the tanker's tonnage or $6.8 million, whichever is the lesser. The indemnification payable by CRISTAL therefore ranges also from 25% to 40% of the owner's liability.

It can be seen that CRISTAL now closely mirrors the Fund Convention Nevertheless there are some significant differences. From the point of view of coverage, the CRISTAL applies to pure threat situations whereas the Fund Convention does not. From the point of view of procedure there is also likely to be a significant difference. Claims under CRISTAL are handled swiftly and with the minimum of bureaucracy; claims under the Fund Convention are bound to take longer, and they could ever become involved in litigation (an impossible under CRISTAL).

CRISTAL is limited to incidents where the oil concerned is 'owned' by an oil company party to the contract. Whereas the Fund is limited by reference to the territories and ships of states party to the Convention. In practice this means that, until the Fund Convention is ratified by nearly all the states in the world, CRISTAL would cover for more incidents that would the Fund Convention. CRISTAL does not cover incidents caused by nature phenomena of an exceptional, inevitable and irresistable character, or those caused by terrorist acts, whereas the Fund Convention does. In practice this is unlikely to be a significant difference since few such incidents can be expected (*)

THE INTERNATIONAL CONVENTION RELATING TO INTERVENTION ON THE HIGH SEAS IN CASES OF OIL POLLUTION CASUALTIES

INTRODUCTION

Ever since the Torry Canyon grounded on 18 March, 1967, states have regarded as important the question of whether or not a coastal state threatened with oil pollution damage may take control of the situation, even against the well of other interested states or persons (who may include the shipowner, charterer, cargo owner, insurers, salvors and the state of registry).

The Torrey Canyon, a tanker registered in Liberia, owned by a Bermudian Corporation, under charter to an American Corporation sub-charted to a British Company, and manned by Italian nationals, grounded on a reef outside the territorial sea then being claimed by the United Kingdom. The vessel was equipped with the most modern machinery and navigational aids and had the highest classification obtainable from the Lloyd's Registry of Shipping. The cause of the casualty was attributed by the Liberian Board of Investigation to human error. Approximately 50,000 tons of oil leaked from the vessel and caused significant economic damage to the coastal interests of both Great Britain and France. Salvage attempts were unsuccessful and the British government had to resort to bombing the wreck in order to minimise the pollution threat. It was this act of bombing of a foreign-flag vessel on the high seas by a coastal state, which resulted in the International Convention Relating to Intervention on the High Seas in cases of Oil Pollution casualties - Intervention Convention for short.

Doubts about the legality of its action led the United Kingdom Government to refer the question to the IMO. The result was the adoption in 1969 the Intervention Convention.

INTERNATIONAL LAW AND THE INTERVENTION " CONCEPT "

Prior to 1969 the only multilateral treaty under which such justification might have been sought was the Geneva Convention on the Territorial Sea and Contiguous Zone, 1958, Article 24 (1) of which provides as follows:

'In a zone of the high seas contiguous to its territorial sea, the Coastal State may exercise the control necessary to:

(a) Prevent infringement of its customs, fiscal, immigration or sanitary regulations within its territory or territorial sea;

(b) Punish infringement of the above regulations committed within its territory or territorial sea.'

The customary international law precedents utilised dealt with self defence, self protection, self preservation, necessity and self-help, all of which were based on the belief that a state has an inherent right to protect its territorial integrity in times of stress.

The Article 221 of the International Convention on the Law of the Sea deals with the type of maritime casualty envisioned in the Intervention Convention.

The law of the Sea Convention wording expressly declines to prejudice a state's ability to intervene on the high seas pursuant, either to 1969 Intervention Convention or customary International Law. Thus it does not create a right of intervention, but merely recognises that such a right is existed.(*)27

THE 1969 INTERVENTION CONVENTION AND THE INTERVENTION PROTOCOL, 1973

The Intervention Convention was adopted on 28 November 1969. The preamble indicates that the basis of the Convention is necessity:

> 'The states parties to the present Convention, conscious of the need to protect the interests, of their peoples against the grave consequences of a maritime casualty resulting in danger of oil pollution of sea and coastlines, convinced that under these circumstances measures of an exceptional character to protect such interests might be necessary on the high seas and that these measures do not affect the principle of freedom of the high seas...'

The heart of the Intervention Convention and the issues that created most debate are located in Article 1:

> 'Parties to the Present Convention may take such measures on the high seas as may be necessary to prevent, mitigate or eliminate grave and imminent danger to their coastline or related interests from pollution or threat of pollution of the sea by oil, following upon a maritime casualty, or acts related to such a casualty, which may reasonably be expected to result in major harmful consequences.'

It may immediately seen that this provision is very close to the doctrine of necessity in the customary international law, although of course formulated with much greater precision. The most important feature is that no power to intervene arises unless there is grave and imminent danger.

The interest threatened is expressed widely by virtue of definition of 'related interests' in Article II (4) - they include fishing activities, tourism and the well being of living marine resources and of wildlife', although these interests must be 'directly affected or threatened by the maritime casualty.'

Hence there is a power to intervene based on purely environmental grounds, in contract to the position regarding civil liability at common law, where a proprietary or pecuniary interest must be injured before there can be a right to compensation (*)[28]

One of the most important limitations of the Convention is that it only applies to measures taken on the high seas. The question of whether or not an extension to cover the territorial sea of parties should be made was one which occupied considerable time at the Conference. Now both the Intervention Convention and its Protocol apply only to measures taken' on the high seas'. Taken literally, this would mean that the coastal State could not rely on the powers given by the Convention and its Protocol to take action in its EEZ. Since no other Convention gives powers of intervention in the EEZ, and unless such powers drive from customary international law, this would mean that a coastal State would have greater powers of intervention on the high sea than in its EEZ, which is plainly absurd. Since the EEZ concept did not exist at the time the Intervention Convention and its Protocol were drafted, it would seem not unreasonable to consider that the phrase, high seas, should be read to mean 'beyond the territorial sea (*)[29]

Article II(2) defines "Maritime Casualty" as '..... a collision of ships, stranding or other incident of navigation or other occurrence on board a ship or external to it resulting in material damage to ship or cargo.'

Casualties involving installations or oil rigs, warships and government vessels used on non-commercial services are exempted from the right of intervention. However, there is nothing in the defination of ship to limit the Convention to tankers; apart from the noted exceptions, it applies to any sea-going vessel of any type whatsoever and any floating craft.

The Intervention Convention applies only to measures of intervention against casualties causing or threatening pollution by oil.

The most persuasive argument favouring the Public Law Convention as a codification can be found in the Resolution on International Co-operation concerning Pollutants other than oil, which Brussels Conference also promulgated as part of the final act of the Conference.

This resolution stated that "the limitation of Convention to oil is not intended to abridge any right of a coastal State to protect itself against pollution by any other agent." Obviously, if a customary right exists to abate other pollutants; then a similar right must exist with regard to oil, the primary polluter of the oceans. Following this logic, it seems conclusive that Article III merely incorporates customary international law into a procedural format alongwith some good neighborliness and cooperation (*)[30]

The application of the Intervention Convention was expanded in 1973 by the Protocol Relating to Intervention on the High Seas in Cases of Marine Pollution by Substances other than oil which was completed at the same time as the MARPOL Convention.

While Article I describe when the right of intervention arises, Articles III and V describe how that right shall be lawfully exercised.

Article III establishes the procedural hurdles for the coastal state prior, during and after intervention on the high seas. Prior to intervention the coastal state is obliged to consult with other states affected by the maritime casualty, particularly with the flag state, and may also consult with the group of experts established under Article IV. The Coastal State is required to notify all known interested parties of the measures proposed and taken. All measures taken must have due regard for human life and safety.

Article III (d) provides that:

> "..... in cases of extreme urgency requiring measures to be taken immediately, the coastal state may take measures rendered necessary by the urgency of the situation, without prior notification or consultation or without continuing consultations already begun. "

This "escape clause" might be used frequently by coastal states since it dispenses with the procedural aspects of intervention. To use the "escape clause", however, the situation must be exceptionally extreme. Even in using the "escape clause" the intervening State must take reasonable action in the circumstances, including notification and consultation.(*)[31]

Article V provides for the degree of the measures taken. This Article makes it clear that the measures taken by the coastal state must be in proprotion to the actual or threatened damage the so-called proportionality principle. Hence, by Article V(2) the measures 'shall not go beyond what is reasonably necessary to achieve the end mentioned in Article I and shall cease as soon as that end has been achieved; they shall not unnecessarily interfer with the rights and interests of the flag State, third states and of any persons, physical or corporate, concerned.'

Although this principle is inherent in the customary doctrine of necessity, the Convention improves considerably thereon by enumerating (in Article V(3) the considerations to be taken into account when deciding what measures are proportionate to the damage threatened or suffered. '(a) the extent and probability of imminent damage if those measures are not taken; and (b) the likelihood of those measures being effective; and (c) the extent of the damage which may be caused by such measures'.

Article VI provides for coastal State compensation in situations where the measures taken were in contravention of the Convention and the measures exceeded those reasonably necessary. The Convention, however, contains a lengthy Annex on conciliation and arbitration, and only way for a private party who seeks compensation under Article VI to succeed as if the State of which he is a national takes up the case under Article VIII (unless of course, the coastal state volumtarily agrees to negotiate and settle direct with such a claimant. (*)32

The Convention, in general, created relatively little controversy and inspite of restrictions on the authority of the coastal state, the mechanism of control created by the Convention over the right of intervention, seems again to work in favour of coastal states' interests.(*)33

...

THE LAW OF THE SEA CONVENTION

INTRODUCTION

The United Nations Convention on the Law of the Sea (LOS) which was opened for signature on 10 December, 1982 is a modern constitution regulating all peaceful uses of the oceans. 46 of the 320 articles which comprise the entire text of the LOS deal with the protection and preservation of the marine environment. Furthermore, reference to the need to protect the marine environment is found in various other parts of the Convention.(*)34

It was not necessary for the United Nations Conference on the Law of the Sea (UNCLOS-III) to consider detailed standards relating to marine pollution, nor perhaps would the Conference have been well suited to the elaboration of technically complex matters. Instead, having for the first time laid down a general duty to protect and preserve the marine environment.

Part XII of the Law of the Sea Convention contain certain main principles concerning the general duties of states to preserve and protect the marine environment (Arts; 192-196), globale and regional co-operation (Arts; 197-201) technical assistance (Arts; 202-203), monitoring and environment assessment (Arts; 204-206) and responsibility and liability (Art. 235).

The provisions of the Convention deal with the environment protection issues essentially by identifying the different pollution sources. There are articles dealing with pollution from land-based sources, from or through the atmosphere, by dumping, from vessels and from installations and devices used in exploration or exploitation of the natural resources of the seabed and its subsoil (Arts; 207-212).

The conference concentrated on defining the jurisdictional rights and obligations, both legislative and enforcement, of flag, Coastal and port, States, which is the main concern of this paper.

THE REGIME OF THE LOS CONVENTION

In spite of some progress, the framework for the prescription and enforcement of pollution standards is less than satisfactory for a number of reasons. First, many flag States, specially flags of Convence - have been lax in enforcing the provisions of Conventions to which they are parties. The failures of flag States to take proper enforcement action have been compounded by the fact that these states are the only states which can take enforcement action against a vessel polluting the waters beyond the territorial sea, which is where most pollution from vessels occurs. Secondly, under both Customary Law and the Territorial Sea Convention there are no limits on the type of pollution regulations a coastal State can prescribe for its territorial Sea.

These dissatisfactions with the traditional legal framework have led to two main stands of change at UNCLOS. On the one hand, the more environmentally conscious and many non-maritime states have sought to extent the enforcement powers of coastal and port states in order to compensate for the shortcomings of flag state enforcement. On the other hand, the maritime states have tried to limit the legislative discreption of Coastal States in order, that should be a degree of uniformity in Coastal States' Regulations. The maritime states have also sought safeguards to acompany the proposed increase in the enforcement powers of Coastal and Port States for the purpose of preventing undue delay to - and hence increased operating coasts for - their vessels.

Both groups have been relatively successful in seeing their concerns met in the Law of the Sea Convention, which reflects a carefully balanced compromise between them (*)35

THE LEGISLATIVE COMPETENCE

(a) FLAG STATE LEGISLATIVE COMPETENCE

Traditionally, the flag State has exercised all rights and responsibilities, for the conduct of its vessel on the high seas. As far as prescription of pollution standard is concerned, the Law of the Sea Convention makes no change in the traditional competence of flag States to prescribe their legislation for their vessels wherever they may be: it does, however, go further by placing an obligation on flag States to adopt pollution regulations for their vessels which 'at least have the same effect as that of generally accepted international rules and standards established through the competent international organization (IMO) (*)36 or general diplomatic conference' (LOS Convention, Art. 211(2))

(b) COASTAL STATE LEGISLATIVE COMPETENCE

The legislative competence of Coastal States has been reduced by the Law of the Sea Convention in respect of the kind of pollution regulations which may be adopted, but increased in respect of the geographical area to which such regulations may be applied. In the territorial sea (which extend 12 miles from continental baselines), the Coastal State may prescribe pollution regulations for foreign vessels in innocent passage, provided such regulations do not ' apply to design, constration,

manning or equipment of foreign ships unless they are giving effect to generally accepted international rules or standards (LOS Convention, Art. 21(2)). Furthermore, such regulations must be duly publicised, must be non-discriminatory and must not hamper the innocent passage of foreign vessels (LOS Convention, Arts; 21(3), 24, 211(4)). Where the territorial sea consists of straits subject to the regime of transit passage, the Coastal State's Legislative Competence is even more restricted. Here pollution regulations may be adopted only if they give 'effect to applicable international regulations regarding the discharge of oil' oily wastes and other noxious substances in the strait' (LOS Convention art. 42(1). Such regulations must be non-discriminatory, must not hamper transit passage and must be duly publicised by the strait State (LOS Convention, Art. 42(2),(3)). While the Law of the Sea Convention has restricted the scope of Coastal States' Legislative Competence in their territorial Sea, it has increased the geographical scope of their legislative competence by giving them certain powers to legislate for marine pollution from foreign vessels in their EEZ (which reaches 200 miles from baselines).

Under Article 211(5) a Coastal State may adopt pollution legislation for its EEZ which conforms and gives effect to 'generally accepted international rules and standards established through the competent international organzation or general diplomatic conference'. Where the latter rules are considered inadequate to provide sufficient ecological protection for certain areas of the EEZ, the Coastal State may adopt regulations implementing International rules and standards or navigational practices which the IMO has made applicable to special areas or it may adopt additional regulations of its own, provided that these do not impose design, construction, manning or equipment standards on foreign vessels other than generally accepted international rules and standards.

In each case, special procedures are required: these include consultation with the IMO and obtaining its approval, and giving at least fifteen months' notice of the entry into force of the Coastal State's regulations (LOS Convention, Art. 211(6)). (*)37

(c) PORT STATE LEGISLATIVE COMPETENCE

The law of the Sea Convention makes no changes to the legislative competence of Port States. However, Port States may, under Article 211 (3), establish particular requirements for pollution control that vessels must meet as a condition of entry to harbours and off-shore facilities. Adequate notice of these requirements must be communicated through the competent international organization. However, the right of innocent passage by vessels, which is vaguely defined throughout the Convention, must not to be impinged (*)38

ENFORCEMENT JURISDICTION

While, in general, the LOS Convention, as many authers believe represents a fiarly modest move in favour of Coastal States' Regulatory jurisdiction the compromise reached on the power to enforce internationally agreed rules and regulations represents a balance which is more, but far from completely in favorr of Coastal States interests.

(a) FLAG STATE ENFORCEMENT JURISDICTION

Article 217 of the LOS Convention provides that flag States not only may enforce (in the sense of judical jurisdiction) violation of pollution laws applying to their ships wherever committed, but must do so. In particular, flag States must lay down penalties adequate in severity to discourage violations; prohibit their vessel from proceeding to sea unless they comply with the requirements of international rules and standards;

ensure that their vessels carry the certificates required by such rules; periodically inspect their vessels; and investigate alleged violations of the rules by their vessels. Where allegations are made by another State, that State and the IMO must be informed by the flag State of the action taken by it in response to the allegation. On largely theoretical questions which the LOS Convention does not deal with directly is whether a flag State can arrest one of its vessels in the EEZ of another State. The answer would seem to be that it can. Article 92 of the Convention gives the flag State exclusive jurisidction over its vessels on the high seas. By virtue of article 58(2), art.92, applies in the EEZ to the extent that it is not incompatible with the Coastal State's rights. Since the Coastal State has no general right to arrest foreign vessels in its EEZ for breach of anti-pollution regulations, it would seem that there is no Coastal State right with which article 92 is incompatible, that therefore article 92 does apply, and thus that a flag State can arrest one of its vessels in the EEZ of another State (*).
39

(b) COASTAL STATE ENFORCEMENT JURISDICTION

Enforcement by Coastal States is governed largely by article 220. Where a foreign vessel is suspected of having violated during its passage through the territorial sea the Coastal State's anti-pollution legislation or applicable international rules relating to pollution from ships, the Coastal State may, without prejudice to its general enforcement competence in the territorial sea as set out in section 3 of part II of the LOS Convention, undertake physical inspection of the vessel and, where the evidence so warrants, institute legal proceedings (LOS Convention, art. 220(2). The Coastal State will have a power of arrest under section 3 of Part.II. However, where the alleged violation is committed by a vessel during the exercise of its right of transit passage through a strait, the coastal State may arrest the vessel only if the violation causes or threatens 'major damage to the marine environment of the straits' (LOS Convention, Art. 233).

Where an alleged violation takes place in the EEZ the Coastal State may, either in its territorial sea or EEZ , require the offending vessel to give information regarding its identity and port of registry, its last and next port of call and other information required to establish whether a violation has occurred. Where the alleged violation in the EEZ has resulted 'in a substantial discharge causing or threating significant pollution of the marine environment' the Coastal State may undertake physical inspection of the vessel in the EEZ or territorial sea if the vessel has refused to give necessary information or has given manifestly incorrect information. But only where the alleged violation has resulted' in a discharge causing major damage or threat of major damage to the coastline or related interests of the Coastal State, or to any resources of its territorial sea or exclusive economic zone' may the Coastal State arrest the vessel (LOS Convention Article. 220(3)-(8)). The Coastal State may exercise its' enforcement powers in its territorial sea or EEZ in respect of violations not only of its own pollution rules, but also of' applicable international rules and standards'. The effect may be that some Coastal States take action to enforce the provisions of Conventions to which they, and possibly also the flag State of the offending vessel, are not parties, unless 'applicable' is taken to refer to rules which are contained in a Convention to which the Coastal State is a party or are part of customary international law.(*)[40]

(c) PORT STATE ENFORCEMENT JURISDICTION

The most radical innovations made to the enforcement of marine pollution standards by the Law of the Sea Convention concern the powers given to Port States. Article 220(1) follows customary international law by providing that a State may arrest and prosecute a vessel in one of its port which is alleged to have violated that State's pollution law or applicable international rules in its territorial sea or EEZ.

However, article 218 is truly innovatory because it provides that a Port State can also take legal proceedings where a vessel is alleged to have discharged polluting matter outside that State's territorial sea or EEZ' in violation of applicable international rules and standards established through the competent international or general deplomatic conference'. The Port State must not take legal proceedings where the discharge occurred in the internal waters, territorial sea or EEZ of another State unless that State or the flag State so requests. Additionally, under Article 219, where a port State has ascertained that a vessel in one of its ports in' in violation of applicable international rules and standards relating to seaworthiness of vessels and thereby threatens damage to the marine enviornment', it shall take administrative measures to prevent the vessel from sailing until the causes of the violation have been removed or unless the vessel is going to the nearest repair yard.

Where either a port State or a Coastal State arrests and proceeds against a foreign vessel for alleged violation of pollution regulations in the situations referred to above, its action are subject to a number of safe-guards set out in Articles 223-32. These provide inter alia that arrest may be made only by Government officials and State-owned ships and aircraft, and must be done in such a way as not to endanger navigation or the marine environment; foreign vessels may not be detained longer than necessary; legal proceedings must normally be susbended when the flag State takes proceedings in respect of the same incident; the penalties imposed for a violation must normally be limited to monetary ones; and flag States must be promptly notified of proceedings taken against their vessels. The requirement that the port or Coastal State must normally suspend legal proceedings if the flag State institutes proceedings, might at first sight seem to undermine the Law of the Sea Convention's attempts to remedy the deficiencies of flag State jurisdiction by strengthening coastal and Port State enforcement jurisdiction.

It must be noted, however, that there is no obligation to suspend proceedings where the pollution offence was committed in the territorial sea or caused 'major damage to the Coastal State', or where the flag State has not instituted proceedings within six months of the coastal or Port State taking action or where the flag State has repeatedly disregarded its duty to enforce effectively violations of international rules committed by its vessels. Furthermore, Article 228 appears to suggest that if the flag State begins legal proceedings but does not bring them to a conclusion, the port or coast State may lift the suspention on its own proceedings and continue with the case.

THE LAW OF THE SEA CONVENTION AND THE INTERVENTION ON THE HIGH SEAS.

Article 221 deals with the type of maritime casualty envisioned in the Intervention Convention:

(1) Nothing in this part shall prejudice the right of States, pursuant to international law, both customary and conventional, to take and enforce measures beyond the territorial sea proportionate to the actual or threatened damage to protect their Coastline or related interests, including fishing, from pollution or threat of pollution following upon a maritime casualty or acts relating to such a casualty, which may resonably be expected to result in major harmful consequences.

(2) For the purposes of this article, "Maritime Casualty" means a collision of vessels, stranding or other incident of navigation, or other occurrance on board a vessel or external to it resulting in material damage or imminent threat of material damage to a vessel or cargo.

As it was mentioned in the previous chapter, the law of the Sea Convention wording expressly decline to prejudice a state's ability to intervene on the high seas pursuant, either to the 1969 Intervention Convention or customary international law. Thus it does not create a right of intervention, but merely recognises that such a right exists. Article 221 takes into account the sui generis status of the exclusive economic zone by indicating that the right of intervention may be exercised beyond the territorial sea. The most important "new" aspect of Coastal State intervention introduced in Article 221, is that it permits "proportionate" responses to "threatened damage" from a maritime casualty which creates an "imminent threat" of damage. This seems to be an expension of the right of intervention outlined in the 1969 Convention by including threats, as well as, grave and imminent danger.(*)41

The provisions of the Law of the Sea Convention should lead to much more effective enforcement of international pollution standards. Where a flage State is lax in taking enforcement action, port and Coastal States can now step in. In practice, given the difficulties of arresting a vessel in a passage which is unwilling to comply, Port State jurisdiction will probably be more frequently exercised and more effective than the jurisdiction of Coastal States. The shift in recent international Pollution Conventions - particularly in the MARPOL Convention- away from discharge standards to construction standards which have to be certificated will facilitate the exercise of Port State jurisdiction, is as much as the difficulties of proving violations of discharge standars will be avoided. At the same time the existence of Port State jurisdiction may persude flag States which have hitherto been lax in enforcing standards to take a more effective line in future- if only for reasons of national pride.(*)42

FOOTNOTES

1. For more details see R.R.Churchill and A.V. Lowe. The Law of the Sea. Manchester - 1983, p. 215. Also see, Gerald Moore - Legal Aspects of Marine Pollution Control - Marine Pollution, edited by R.Johnston London, 1976

2. The International Conference on Oil Pollution of Navigable waters, 1926 (Washington).

3. R.R. Churchill and A.V. Lowe, Supra p.216.

4. R.R. Churchill and A.V. Lowe, Supra p.219.

5. Assuranceforeningen - Skuld (Gjensidig) Marine Pollution OSLO 1983, p. 14.

6. Gerald Moore - Legal Aspects of Marine Pollution Control- Supra p. 604.

7. R.R.Churchill and A.V. Lowe, Supra p. 220

8. MARPOL entered into force on 2 October, 1983 in respect of Annex. I, Annex II is presently scheduled to enter into force three years later, i.e. 2 Oct, 1986 Optional Annexes have not yet received a sufficient number of acceptances and their entry into force dates are not yet known.

9. Although the 1971 Amendments did not formally enter into force it was recommended that they would be put into effect nationally, and they were observed in several maritime countries.

10. COW does present operational dangers because of the build-up of explosive gases in cargo tanks as the Oil is unloaded. For this reason, the Protocol to the 1974 SOLAS Convention, stipulates that an inert gas system (IGS) must always be used when COW is operated. IGS is also a requirement for new tankers.

11. David W. Abecassis - The Law and Practice relating to Oil Pollution from ships. London. 1978. p.36.

12. For more details see shore facilities slammed by ISC Survey- Lloyd's list, Wed. March 14, 1984. See also GR. J. Timagenis - International Control of Marine Pollution. Ocean Publication Inc. New York 1980, p.342.

13. The MARPOL 1973/78 Convention - VERITAS, Sept. 1983 p.30.

14 For more details see the Documents of Fresh Water Ballast. Seminar held at IMO - Jan. 1983, See also IMO/UNDP International Seminar on Receiption Facilities for Wastes. London 30-31 August, 1984.

15. See, Oil Pollution from Tanker Operation - causes, Costs, Controls. by W.G. Waters II, T.D. Heaver and T.Verrier. University of British Columbia, Vancouver - Canada, 1980.

16. See, report of the MEPC on its Ninteenth Session (MEPC 19/18, 4 January, 1984) and MEPC - 20th Session Agenda Item 1, MEPC 20/1, 23rd December, 1983.

17 - Dr. David Abecassis - Libility for Oil Pollution from ships. The International Maritime Organization, edited by Samir Mankabady - Great Britain 1984. p.301.

18 - David W. Abecassis - The Law and Practice relating to Oil Pollution from Ships. London 1978, p.182.

19 - R.E.Ganten - Liability and Compensation for Oil Pollution Damage. (Unpublished Article)

20 - Robert Grime. Shipping Law, London 1978. p.224.

21 - David W. Abecassis - Supra, p.191.

22 - Christoph H. Zimmerli - The Convention Adopted under the Auspices of IMO Dealing with Legal Matters - an Overview of Treaties Already adopted and of Instruments, Still in preparation. (Unpublished Article).

23 - R.E. Ganten - Supra.

24 - For more details See Dr. David Abecassis Liability for Oil Pollution from Ships and Dr. R.H. Ganten. The International Oil Pollution Compensation Fund (The International Maritime Organization) Edited by Samir Mankabady. p.300 and 318 respectively. Also see David W. Abecassis - The Law and Practice relating to Oil Pollution from Ships. p.220

25. David W. Abecassis - The Law and Practice relating to Oil Pollution from ships, Supra on p. 239.

26. David W. Abecassis - Supra, p.243.

27. Ted.L. McDorman and Edgar Gold - "The International Convention relating to Intervention on the High Seas in cases of Oil Pollution Casualities. The International Maritime Organization, edited by Samir Mankabady, London 1984. p.295.

28. David W. Abecassis - Supra p.88

29. R.R.Churchill and A.V. Lowe - Supra on p.231.

30. William Kenneth Bissell - Intervention on the High Seas; an American Approach Employing Community Standards. Journal of Maritime Law and Commerce. Vol. 7 No.4 July, 1976. p.718.

31. Ted L.McDorman and Edgar Gold - Supra, p.289.

32. David W. Abecassis - Supra p. 91

33. Ted L. McDorman and Edgar Gold - Supra, p. 292.

34. Peter Bruckner - " What does the United Nations Convention on the Law of the Sea mean to Oil Spill preventing and combating ?" International Symposium on Regional Co-operation on Oil Spill Prevention and Combating -Copenhagen-Denmark, September 17th to 21st, 1984.

35. R.R.Churchill and A.V. Lowe - Supra on p. 225.

36. Valen Zuela Supporting the view that IMO is accepted to be "the appropriate " international organization or "the competent" international organization for establishing the applicable rules and regulations - Sea Valen Zuela - "The Law of the Sea Convention with special reference to the provision, relating to navigation and the prevention of pollution by vessels and dumping and possible role of IMO in the framework of the Convention". (Unpublished Article).

37. R.R. Churchill and A.V. Lowe - Supra, p.227

38. Paul Stephen Dempsey - Compliance and enforcement in International Law - Oil Pollution of the Marine Environment by Ocean Vessels. p.57

39. R.R. Churchill and A.V. Lowe, Supra - p. 228, See also GR. J.Timagenis,. Supra.on p. 515.

40. R.R. Churchill and A.V. Lowe, Supra - p. 228

41. Ted. L.McDorman and Edgar Gold - Supra on p. 296

42. R.R. Churchill and A.V. Lowe - Supra, at 230p.

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CHAPTER IV

NATIONAL LEGISLATION AND REGIONAL ARRANGEMENTS

INTRODUCTION

There is no doubt that many countries around the globle have recognized importance of marine environment protection, for a long time, while others just started recognizing it recently.

Countries must be ready in advance, either on national level or by regional arrangement, for any disaster that might occur. It has been proven that experience of other countries, in the field of marine pollution protection, will be helpful in avoiding a major incident, as well as controling any form of marine pollution . Thus other countries' experiences can and should be benefited from.

It is unforunate that the Gulf States did not warrant this field, its relevant importance, except very lately. This can be clearly dedicated not only from the fact that these states have a unique shortage in well trained a national personnel, but also from the inadequacy of their legal regime (Laws, Rules and Regulations) covering this subject.

This point is emphasized by Dr. Al-Awadhi who said " Most Gulf States have no legal regimes within their national laws and legislations for combating the pollution, resulting from the exploration and exploitation of the continental shelf. But there are some articles in the contracts of concession which obligate the companies doing the exploration and exploitation work to prevent pollution of the area of the sea by oil". (*)[1]

This chapter is devided into two parts. The first part concerns the national legislation in the sphere of marine environment protection and pollution control (the principle of legislative sources) in addition to the stands in respect to the International Maritime Conventions.

While the second part concentrates on the regional arrangement for the protection of the marine environment; with respect to its legal frame work - the Kuwait Regional Convention of 1978 and its complementry Protocol; and with respect to its organizational and administrative frame-work - the Regional Organization for the Protection of the Marine Environment.

NATIONAL LEGISLATION

As we have previsouly mentioned, the "pollution problems" in the Arabian Gulf Area has been the natural consequence of the oil discovery and the industrial developments proceeding it, especially during the sexties and seventies of this century. Therefore, one does not expect the presence of any environmental laws before this time period. In addition, most of the Arabian Gulf Countries have fallen under British colonization and did not get their independence untill the beginning of the seventies, except Kuwait which gained independence in the early sexties, which hadicapped their political and legal development and inturn delayed the enactment of laws concerning occupational health and of national laws concerned with the protection of the environment in general and the marine environment in particular.

As Dr. B. Al-Awadhi precisely mentioned in her book " The Protection of the Sea Environment in the Gulf Region" (*)[2] there are two different legal sources, which regulate the marine environment protection in the Gulf States:-

First-Laws and Regulation not specially related to prevention and control of marine pollution but contain some provisions in this respect. Example of these measures are:-

- The Bahranian and Iranian Port Regulations,
- The Saudi Arabia Port Law and Regulations,

- Laws of Doha Sea Port and the relevant legislations,
- Iraqi law of 1970 concerning preservation of Oil Wealth and Natural Hydrocarbons,
- The Iranian Petrolium Act of 6 August, 1974.

Second, National Legislation designed to prevent and eleminate all sources of marine pollution such as:-

- Kuwait Law concerning the Prevention of Pollution of Navigable Waters by Oil, 1964.
- Oman Law to Supervise Marine Pollution, 1974.
- Iranian Act concerning Protection of Sea and Frontier Rivers against Pollution by Oil, 1976.
- Draft-Act to amend and Supplement the Iranian Maritime Code - 1983.
- Sultanat of Oman Marine Pollution Control Law, 1983.

To present a clear perception of the aforementioned laws, each country will be taken separately to explore the development of its environmental legislation and to analyse the laws in force and draft-laws therein in light of the new developments in the International Environmental Laws.

K U W A I T

It should be mentioned that Kuwait is one of the first Gulf States that adopted national legislations, which formulated a legal regime for the prevention, control and combating of oil pollution from ships. Kuwait developed her anti-pollution provisions by Law No.12 of February 26, 1964, regarding Prevention of Pollution of Navigable Waters by Oil.

This law was enacted after Kuwait ratified the International Convention for the Prevention of Pollution of the Sea by Oil (OIL POL.54/69) and in compliance with third article of the same stipulating that party states shall undertake to promulgate all laws, decrees, orders and regulations which may be necessary to give convention full and complete effect.

The Kuwaiti Law paralleled and coinsided, to a great extend, with the articles of OIL POL.54/62 without copying such articles. The aforementioned Law reflects in its esence the general manifistations of OIL POL. 54/62 eventhough it differs some what in some of the details.

The Kuwaiti Law, with regard to the application, has adopted the same classification provided under article II (a) of the OIL POL.54/62. Ships below these limits are exempted from the requirements of the law. In this regard the Kuwaiti Law is less strict than the OIL POL., for under Art. II (a) these ships were exempted provided that the each contracting government took the necessary steps to apply the requirements of the Convention to such ships so far as was reasonable and practicable.

The Kuwaiti Law differs from OIL POL.54/62 in that, the Convention stated clearly that Warships, Naval Ships and Ships temporarily being used as Naval Auxiliaries were exempted from the rules of the Convention, whereas the position of these Ships under the Kuwaiti Law is not clear.

In addition the Kuwaiti Law differs from the OIL POL.54/62 with regard to the discharge of oil or oily mixture which is made to prevent damage to the cargo. In accordance with Art.5(1) of the Kuwaiti Law the damage must be serious or the discharge is not permitted. Under Art.IV(i) of the OIL POL.,such a condition was not required, and no explanation was given in the explanatory memerandum for inserting so strong a word.

To ensure the effective implementation of the Environment Programme, the Government of Kuwait promulgated the 1980 Law concerning Protection of the Environment, which put emphasise on the establishment of a Central Authority for the general supervision of environment protection and its preservation and to co-ordinate with the concerned authorities. (*)$_3$.

SULTANATE OF OMAN

In Oman the Marine Pollution Control Law, 1974 entered into force on January, 1975. This Law deals with Pollution in all its types and forms and aims mainly at preventing all types of pollution, reducing its damage and abatting it in the waters adjacent to the territory of Sultanate of Oman, with an overall goal of preservation of the ecology of the area.

In addition, this establishes a "pollution free zone" encompassing the twelve-mile territorial sea of the Sultanate and those waters extending for thirty-eight nautical miles beyound the territorial sea. Where the coast of another state is opposite or adjacent to the coast of Oman, the limits of the pollution free zone, will not extend beyound such limits as may have been agree to with such other states or, if there is no such agreement, the medium line shall be the boundry line. Oman has already concluded an agreement with the opposite State, Iran, delimiting the boundry of the continental shelf areas between the two States (*)$_4$

What differentiates this law from the Kuwaiti Law is that it encompases all types of vessels and boats used in shipping operations including the floating units for cargo transport whether automative or towed. Accordingly, this law applies to any of the aforementioned vessels, whether registered in the Sultanate or not (foreign), any shore based installation and any oil transport medium.

While the Kuwaiti law applies only to Kuwaiti registered oil tankers of not less than 1500 tons D.W. and other ships of not less than 500 tons D.W also registered in Kuwait. Therefore, the Kuwaiti law excluded the tankers or vessels not registered in Kuwait from its provisions.

The Omani Marine Pollution Control Law ligislates mainly intentional pollution (operational discharge) yet it touches on accidental pollution briefly and in a minor prespective, as in Art. 4.1(D.E) it requires the Omani registered vessel to keep an oil record book, to record the discharges of oil or oily mixtures from the vessel for the purpose of securing the safety of the vessel, preventing damage to any vessel or cargo or saving lives plus indicating the specific types of oil involved and to record the discharging of oil or oil mixture from the vessel as a result of a collision or accident indicating the specific type of oil involved.

Regarding the technical aspects concerning the type of equipments with which the Omani registered vessel are to be fitted. The Omani Law parallels the Kuwaiti Law (Art.7.1 of Kuwaiti Law), but differs from the Kuwaiti Law by encompassing all or certain classes of non-Omani vessels which use the Omani Ports or pass through the "Pollution Free Zone" in an effort to minimize the risk of pollution (Art. 5.3 Omani Law). However, it left the matter in the hands of the Minister without requiring him expressly to do the same, as above stated article stipulates that the Minister may, independently, or in conjunction with other interested ministries departments and agencies of the Government of the Sultanate, promulgate regulations prescribing the type of such equipment. Thus the stipulation did not require the Minister to issue such regulations, but empowered him to do so if the same was necessary.

Referring the issuance of such regulations to the minister stems, in our openion , from the presumption of the legislator that the issue of requiring foreign vessels to be fitted with certain equipments would raise a lot of argumentry disconted, especially the vessels which pass through the "Pollution Free Zone". This would be so as this issue is still a subject of dispute and disagreement in the relevant international forums, eventhough the U.N. Convention on the Law of the Sea adopted some compromised solutions in this regard (See Chapter III - The law of the Sea Convention " Coastal State Legislative Competence".

In respect to vessels visiting Omani Ports, giving the minister the choice in issuing such regulations weakens the force of the Law and its implementation. The minister should be obligated to issue the relevant regulations implementing the provisions of the law, including the article concerning the type of equipment with which vessels visiting the Omani Ports should be fitted. Such an approach is advantages to the Sultanate of Oman in preserving its marine environment and keeping its ports clean, not withstanding some of the narrow-prespective commercial interests, which could stand to suffer as a result of requiring the foreign vessels, especially flag of convenient vessels, to be fitted with the necessary equipments to prevent pollution of the marine envirnment.

For the purposes of enforcing this law, the legislator has been very strict by imposing relatively large financial penalties as well as the penalties of imprisement, licence withdrawal, vessel detention and seizure. Such penalties would be emposed (when guilt is proven) not only on the vessels registered in the Sultanate, but also on foreign vessels and would be enforce against any person or owner of a vessel or owner or operator of a place of land or oil transmission apparatus, whether he is Omani national or foreigner. Such penalties were not impossed to avoid pollutant substances in the pollution free zone only, but also to ensure compliance with all the duties stipulated in the fourth and Sixth chapters of the same law (Art. 2.1,2,3,4 & 5).

Article (2.8,9) concentrated on the power to sieze the ship if payment of the fine or delivery of the security for the payment thereof to the minister is not met ; and also on the temporary or permanent for feiture of any or all rights granted to such owner or occupier. While Art (5.8) of Chapter five titled administration and enforcement, detailed rather clearly the powers of the minister of detain or seize a vessel from several reasons one of which, for example,is when an accident to or in a vessel occurs which could result in large-scale pollution of the the pollution free zone, alongwith other reasons stipulated in the aforeside article.

To strengthen the control of the coastal state, Art.(5.5) empowered any pollution control officer to go on board a vessel or an oil transmission apparatus in the pollution free zone or enter a place on land in the Sultanate for ensuring the compliance with stipulations of this law or any regulations issued thereto or for effecting emergency measures regarding the elimination of any pollution from the pollution free zone.

Eventhough at the time this law was enacted, Oman was not a party to the "Intervention Convention" yet the esense of the same Convention is embodied in Art.(5.7) which allowed the minister, in the event of an accident to or in a vessel, a place on land, or transmission apparatus which results in or could result in a large scale pollution of the pollution free zone, to take any and all necessary independent action, including the sinking or the destruction of the vessel or the destruction of the place on land or oil transmission apparatus.

Eventhough, this law is much more advanced than the OIL POL.54/62, yet it embodies some of the characteristics of this Convention. For example, the definition of an oil mixture is simillar to that present in OIL POL, which means any mixture with an oil content of 100 parts or more in 1,000,000 parts of the mixture.

In respect to the oil record book, the Omani Law however, adopted the 1969 amendments to the OIL POL. Convention. As we previously mentioned in Chapter III - in this regard, the 1969 amendments provided for a new form of oil record book which was designed to show the movement of oil cargo and its residues from loading to discharging on a tank to tank basis.

This law is relatively comprehensive compared to the Kuwaiti Law as the legislator did not forget to include in the provisions of the law rules concerning the civil liability for expenses and damages. In this respect, Art. (6.1) emposes on the party causing pollution in the pollution-free zone, regardless to whether there is a finding of culpability or negligence, the liability for:

'a) the costs incured' by the Government of the Sultanate or any other person in preventing, stopping, reducing or eliminating the pollution from the waters of the pollution free zone and in restoring the ecology of the area to the condition existing prior to the discharge;

'b) the damages suffered by the Government of the Sultanate or any other person as a result of the discharge, in addition to the costs referred to in sub-paragraph (a) of this Article.

Furthermore, for the purpose of covering such expenses and the indemnity guarantee Art. 4.6 requires the owner of any Omani-registered vessel or/ and any non-Omani vessel which carries a pollutant in bulk (the quantity is not specified) to or from any Omani port, to submit to the Minister, subject to any regulations promulgated by the later, evidence of Financial responsibility in the form of insurance or an indemnity bond or any other evidence of financial responsibility satisfactory to the Minister.

Eventhough this Art. does not repreduce the rules of the CLC and the Fund convention, (yet it reflects a basic principle of the Fund Convention,) yet it reflects a basic principle of the two Conventions namely, indemnity for and coverage of the loss and damages due to oil spills including the cost of removing the pollution.

In addition, the Sultanate of Oman recently witnessed a very significant development in the field f marine pollution prevention. A Royal Decree was issued in 1979 which set up the Council for Conservation of the Environment and Prevention of Pollution which coordinates the activities of the various agencies involved. The Sultanate of Oman has a new Draft Marine Pollution Control Law which will be enforced by the Council.

In association with the Cabinet of the Deputy Prime Minister for Legal Affairs, The Royal Oman Police Coast Guard and the Sultanat of Oman's Air Force.

The provisions and requirements of the Marine Pollution control Law have been formulated to be compatable with MARPOL 73/78. The London Dumping Convention 1972, The Civil Liability Convention 1969 and the International Oil Pollution compensation Fund 1971.

Provisions for "Special Areas" as contained in MARPOL 73/78 have been incorporated in the Sultanate of Oman Marine Pollution control Law.

In future vessels operating in the Territorial Waters of the Sultanate of Oman will be checked to ensure compliance with the Marine Pollution Control Law. In addition the following documents will be inspected:

(1) Insurance
(2) International Oil Pollution Prevention Certificate.
(3) Crude Oil Washing Manual.
(4) Clean Ballast/Segregated Ballast Manual.
(5) Inert Gas Manual
(6) Oil Record Books.

The Offending vessels detected outside the Territorial Waters of the Sultanate of Oman but within the EEZ, will in future be reported to the Flag State, the Vessel's operating Company and the International Maritime Organization. Every attempt will be made to collect evidence necessary for a successful prosecution to be made. The Sultanate of Oman's Government expects Flag States to take the necessary action against offending vessel and it is the intention of the Government to follow each case through the auspices of InternationalMari time Organization. Within the Territorial Waters of the Sultanate of Oman all offending vessels will be prosecuted within the provisions of the Marine Pollution Control Law.

IRAN

Iran, in December, 1975, " temporarily" extended its jurisdiction, for the enforcement of the Iranian laws on pollution control, to the limits of the superjacent waters of the Iran's continental shelf. On Feb 14, 1976, Iran passed the "Act concerning Protection of the Sea and Frontier Rivers against Oil Pollution" which extended Iran's jurisdiction to the outer limit of the continental shelf in the "Persian" /Arabian Gulf and at 50 miles from the base-points of (the base-points)of the territorial sea in the Gulf of Oman. Already in October, 1973,Iran had extended its exclusive zone up to these limits for fisheries purposes. The regulations enabled Iran to control the maritime traffic in the Gulf and the strategically important Strait of Hormuz.

At the request of the late Shah of Iran, the Government of Sultan Qabus accepted that the Iranian and Omani Navy and Air Forces jointly patrol the entire Irano-Omani jurisdictional waters to control pollution. One may not forget, however, that the main purpose of the Iran-Oman participation was to gain control over the maritime traffic through the Strait of Hormuz, rather than pollution supervision. It was even reported that Iranian naval vessels began to patrol the Indian Ocean off the costs of Oman in co-operation with South Africa. This control of all shipping through the Strait developed into further agreements on contingency plans between Iran and Oman(*)[5].

Section 2 of the Iranian Oil Pollution Act 1976 prohibits any discharge of oil or oily mixtures in the frontier rivers, internal waters, the territorial sea, and the contiguous zone.

It should be mentioned here that the definition of oily mixture in the Iranian Act differs from both the Kuwaiti and Omani Laws, by incorporating the MARPOL's definition of the oily mixture (Regulation 1 (2) of Annex.1) While Kuwaiti and Omani Laws reflect the definition of Oily mixture in OIL POL. Article (1) of the Iranian Act States that for the purpose of the Act "Oily Mixture" means any mixture with an oil content.

The provisions of this section cover not only all Iranian and foreign ships but also any fixed or floating offshore installation and any pipeline and oil reservoirs whether offshore or onshore.

The Iranian Act contains several articles which are essential for the enforcment of the anti-pollution law. A criminal offence is committed when the pollution results either from intentional discharge or negligence . Adelebarate discharge of oil mixture is punishable by imprisonment for a period between six months to two years or a fine between one million to ten million Iranian rials. The penalty for negligent pollution is a fine not exceeding one million rials .
In addition to the above mentioned penalties, the Act imposed an obligation on the ships entering Iranian Port or waters to keep an Oil Record Book as a means to observe the implementation of the law. The following operations and events must be recorded in that Book; Ballasting and deballasting, cleaning of tanks, settlement of oil from water in the Slop tank on other tanks or from other parts of the ship, and the escape of oil due to an accident, or in exceptional cases.

Moreover, (following the Omani patern) any person who fails to carry out the obligations as provided in Art.(4) well be liable to the minimum penalties prescribed under Art.(2) of the Act.

In order to compensate any potential loss or damage to the marine environment in the Region, Art.(10) of the Act requires (as the case with Omani Law), from ships to which the act apply, to carry insurance policy or idemnity letter against sea pollution damages, when entering Iranian territorial Sea.

The Iranian Naval and Gendarmerie personnel were enpowered to inspect any ships within the 50 miles off the Iranian coast in the Gulf of Oman and the outer limits of Iran's continental shelf in the Gulf proper and to inspect any Iranian or foreign ships suspected of technical flows or possible leakage in order to ensure the new standards and, if necessary to take steps if oil pollution had occurred.

In addition,the National Iranian Oil Company (NIOC), the responsible Governmental body for the oil and gas industries, has shown a consistent policy on oil pollution. According to the Petroleum Act 1974, the NIOC is responsible for the conservation of the natural resources and also for protection of the air, water and land environment. The Act further states that the oil companies operating within Iranian territory and/or continental shelf are bound to observe all regulations announced and/or communicated by the Iranian Government or the NIOC. The Iranian Ministry of Oil, established after the 1979 Islamic Revolution, through the NIOC's Research Centre, has assumed responsibility for pollution control. The Research Centre had previously helped oil industry planners in the choice of optimum locations for installations, design of smokestacks and waste disposal methods. Air, soil and water in the vicinity of all oil and petrochemical facilities were until 1979 regularly monitored to make sure that oil operations did not have adverse ecological effects. All tankers were obliged to follow stringent regulations for loading and waste disposal.

In a noticeably abservable development towards allining the maritime situation in general with the latest national as well as international developments, a draft act to amend and supplement the Iranian Maritime Code of 1964 was issued in August, 1983. The Sixth Chapter of such an Act was reserved for dealing with the subject of " Pollution of the Sea". Accordingly, the same chapter is devided into three parts:

- the first part concerns prevention of pollution of the sea;
- the second part covers the Intervention on the High Sea; and
- the third part concentrates on Civil Liability for pollution.

Furthermore, to implement the relevant conventions, the legislatives concerns in Iran decided not to do so through adopting the approach of merely making reference to such concentions by issuing the ratification decrees to the same (as in the case with many states, one of which is Oman) but through introducing such conventions in the national legislation according to the national style (as was the case with Kuwait when it implemented OIL POL and introduced in its national legislation - as previously mentioned). Therefore, the said draft act was injected with provisions from several international conventions, some of which was clearly and particularly referred to such as the following:

- International Convention on the High Seas in Cases of Oil Pollution Casualties 1969 and the Protocol relating to it of 1973 (Art. 1.1(f));
- International Convention for the Prevention of Pollution from ships, 1973, as modified by the Protocol of 1978 (Art.1.1(n))

Furthermore, the expressions used in this Act shall have the same meaning as when used in the International Conventions, unless the context otherwise requires (Art. 1.2); while the International Conventions interprited by this Act to means those International Conventions, and Protocols thereto, of the International Maritime Organization as ratiffied by and in force in the Islamic Republic (Art. 1.1.(e)).

In addition, the scope of this Act is more comprehensive than the previously referred to Kuwait and Omani Laws, and even the Iranian Act of 1976. It encompasses all sources of Pollution, whether from a vessel or from land in addition to pollution resulting from activities on the contenental shelf, from oil pipelines and from offshore installations (Art.153.1) regardless of whether such pollution accured in the internal navigable waters, the territorial waters or the waters above the continental Shelf (the outer limit of the continental shelf or the medium line in case of areas the delimitation on which has not been agreed yet and 50 N.M. with Oman).

Furthermore the act put an obligation on any Iranian Ship to carry equipment to prevent pollution and comply with such requirements applicable in her case as prescribed in the pollution convention (MARPOL 73/78) (Art. 156(1). However it follows the MARPOL 73/78 pattern with regard to the following:

1- Oil Record Book.
2- Survey and issue of certificate,
3- Inspection.

The first and the last issues are applying not only to Iranian vessels but also apply to foreign flag ships while in the ports or offshore terminals of the Islamic Republic (Art.164.(1)).

To enforce the flag state control the provisions of the Act not permit any Iranian ships to proceed or attempt to proceed to sea unless there is on board and in force an International Oil Pollution Prevention Certificate (Art. 163(1)). Furthermore, in order to strengthen the port state control Article 164.(3) states that a foreign ship required to hold such a certificate shall be subjected to inspection. Any such inspection should be limited to verifying that there is on board a valid certificate, unless there are clear grounds for believing that the condition of such ship or her equipment does not correspond substantially with the Certificate. In that case, the ship shall not sail until the Authority ensure that it can proceed to sea without presenting an unreasonable threat of harm to the marine environment.

With regard to the intervention, the Minister, under Art.165.(1) of the Act has been given powers to take measures on the high seas as may be necessary to prevent, mitigate, or eliminate grave and imminent danger to the coast line of the Islamic Republic or related interests from pollution or threat of pollution of the sea by oil or substances other than oil, following upon a maritime casualty or acts related to such a casualty, which may reasonably be expected to result in major harmful consequences.

Article 167 concerns with civil liability to pay damages. It states that in the event of contravention of the provisions of chapter VI resulting in pollution damage to ports, coastal installations, beaches, marine life and natural resources in the Islamic Republic or the waters referred to previously, any person responsible for such pollution damage shall be liable to pay damages in proceedings instituted before a civil court of completent jurisdiction.

Furthermore, Article 169, following Omani Law, put an obligation on the owner of any ship, to maintain insurance or other financial security, such as guarantee of a bank or certificate delivered by an international compensation fund to cover his liability for pollution damage or part thereof. In addition, to enforce the compliance with such requirements Article 169.(2) states that if

such ships fail to comply with the requirement she may be denied entry into waters above mentioned. Unfortunately the exprision may be used in this article weakned the whole meaning and the purpose of this provision. Instead, it should have be stated that, such a ship not permit to enter into the Iranian Waters if she fails to comply with the mentioned requirements.

The afore-mentioned draft Act is pending the approval of the Iranian Parliament, which may approve it as it is or ammend it accordingly.

With regard the other Gulf States, i.e. Bahrain, Iraq, Qatar, Saudi Arabia and the United Arab Emirates, they have no any national laws specially formulated for preventing and controling marine pollution, what they have actually are laws and regulations which governed shipping and navigation in the territorial waters with some reference to environmental protection.

In this connection, Article 2 of the Iraqi Law No.229 of 1970 concerning "Preservation of Oil Wealth and Natural Hydrocarbons" provides that all Oil operations in the region of the Iraqi Republic including its territorial sea and continental shelf must be carried out in accorddance with Scientific and effcient methods, and in conformity with the safe practice of oil industry. Article 3 states that the operator must take necessary measures to prevent, inter alia, pollution of the air, and surface and subsurface waters.

In addition, Article (17) of Decree-law No.(29) of 1966 on Organizing Doha Sea Port prohibites the discharge of the following substances within the limits of the port:-

(a) The ballast other than clean water;
(b) The bilge water;
(c) Oils of any description, and
(d) Garbage.

Furthermore, Article 4.15.1 and 2 of part 3 of the Rules and Regulations for Saudi Arabian Seaports states that- " The Master of a vessel shall ensure that no contaminated ballast water or cargo slops are discharged except into an approved reception facility. "The vessel shall be responsible for any and all cleaning costs in the event or release of oil or oily ballast water at either the berth or in the anchorage area."

THE STAND ON INTERNATIONAL CONVENTIONS

Since international maritime conventions constitute a legislative source for states parties thereto, and a midway line in determining world wide standards which reflect an acceptable and resonable standard for all concerns, then, the non-acceptance of some states of a given international convention delimits its internationality and effectiveness and creates a disturbance in the legal relations between the states party to the convention on one side and those non-party states on the other side out of which is created differential treatments by the maritime administrations and the local courts between both side, especially in the absence of some maritime laws.

Accordingly here we attempt to shed some light on the stands of the Gulf States in general in respect to the international conventions of concern in this study, in light of the presence of no announced official or non-official stand thereto. This is so because states (especially the Gulf States) do not normally declare publically the reasons for not ratifying a particular convention.

Table.3 presents very clearly the position of the Gulf States regarding the international conventions concerning marine pollution which were discussed in details in Chapter III of this study.

In this respect, Kuwait was always in the forefront when ratifying international maritime conventions is concerned, as it was the first Gulf State which ratified the OIL POL Convention and embadied it the Law No.12 of 1964, as previously stated. In addition, Kuwait did not delay to long its ratification of the Intervention Convention, which the other Gulf States either ratified after along delay or still did not ratify it untill now. Furthermore it is clear from the aforeside table that three Gulf States namely, Bahrain, Iran, and Iraq did not ratify any of the six particular conventions which two states namely Qatar and Saudi Arabia ratified only one thereof which is OIL POL Convention and its amendments.

Regarding United Arab Emirates, inspite of the many difficulties which it faces due to the multiplicity of ports administrations therein, it has come a long way in ratifying the international conventions. Accordingly UAE today has ratified four international conventions all at once and all at one day (See the Table).

It should be noted here that the Sultanate of Oman proceeded since the beginning of this decade to take rapid and concrete steps towards strengthening its legal status and ratifying several of the international conventions relating to the prevention of pollution and the protection of the marine environment. May be it was induced by its unique geographical position and its location near the Strait of Hormuz where the giant oil tankers, prior to enerting the Arabian Gulf, discharges its ballast water containing considerable quantities of elements of pollutants such as oil and other harmful substances.

Accoridingly, the Sultanate of Oman is the only State among all the Gulf States which ratified MARPOL Convention, while the other States are hisitating with respect to its ratification. Eventhough there is no announced official stand from any of the concerned Gulf States, one can presume, through several givings that they plan to ratify it jointly as a group.

TABLE NO. 3

STATUS OF GULF STATES AS AT 17TH APRIL, 1985

SOURCE: IMO. THE LEGAL OFFICE

Gulf States / International Conventions	1954 OIL POL (Amended 1962 1969)	Amendments: 1971 (Great Barrier Reef)	Amendments: 1971 (Tanks)	1973 MARPOL as modified by 1978 Protocol	1969 Intervention Convention	1973 Intervention Protocol	1969 Civil Liability	1976 Civil Liability Protocol	1984 Civil Liability Protocol	1971 Fund	1976 Fund Protocol	1984 Fund Protocol	UN LOS 1982
BAHRAIN													
IRAN													
IRAQ													
KUWAIT	27.11.61				2.4.81		2.4.81	1.7.81		2.4.81			
OMAN				1981	26.11.84	26.11.84	26.1184	26.11.84		26.11.84			
QATAR	31.1.80												
SAUDI ARABIA	30.12.71	5.9.75	5.9.75										
UNITED ARAB EMIRATES	15.12.83	15.12.83	15.12.83		15.12.83		15.12.83	15.12.83		15.12.83			

First - The recommendations of the Ministerial Council of the ROPME in November, 1982 concerning making feasability studies of establishing reception facilities;

Second - The signing of a contract by the ROPME with a Japanese firm to conduct the aforementioned feasability studies. In addition to the assurance of Mr. A. Al-Zaidan, the ROPME Acting Co-ordinator, that such a study is aimed at preparing the Member-States of ROPME to ratify MARPOL $(*)_6$.

Third - Some of the region's states is perfectly convenced that ratifying the Convention (MARPOL 73/78) individually may have adverce effects and consequences on the ratifying states from a purely commercial view point, as such states would certainly loose the ships which are not upto the required standards, as stipulated in the convention. These ships would resort to the nearly ports of those countries which do not require such technical requirements as they are not parties to the Convention at hand.

All the above stated givings assures that there exist an intention to ratify the MARPOL Convention in a joint manner either by all the states parties to the Kuwait Convention or by the Gulf Co-operation Council States as a first step. Yet, developments in the Gulf war, and targeting of oil tankers by both parties to the Conflict, harmers to a large extend any steps or trails towards ratifying MARPOL. This inclines the concerned states toward waiting the situation becomes clearer.

Refering back to the previous table, there is following observation: The ratification of a given international convention took from ten to thirty years. The U.A.E ratified the OIL POL Convention after thirty years from its adoption, while the same took 26 years in the case of State of Qatar. During this period, many developments took place, as the same Convention was ammended several times in 1962, 1969 and 1971, inaddition, MARPOL appeared to replace and supperceed OIL POL which the maritime administrations in most of the Gulf States are unaware of the developments accuring in the international arena technically and legislatively.

It is possible for one to understand the reasons for delay of such states in ratifying OIL POL and MARPOL Conventions or not ratifying it as such conventions are rather technical ones requiring high qualifications and international experience as well as complicated technical requirements such as establishing reception facilities and installing certain equipments on board vessels of party states. While, on the other hand, one finds difficulties in determining the reasons for the stand on the CLC and FUND Conventions as such Conventions concerns the insurance and indemnity for damages resulting from the pollution. It is conceivable for one to be convenced for the American announced stand (the Stand of U.S.A) towards the two Conventions which stresses non ratification of the same due to the inadequacy of the insurance policy and the indemnity bond therein - the amounts set a side to cover the damages resulting from pollution when it occurs. However, in the case of the Gulf States, there seems to be no reasoning from not ratifying neither these two conventions nor the other conventions.

REGIONAL ARRANGEMENTS

In accordance with resolution 2997 (XXVII) of the United Nations General Assembly, UNEP was established " as a focal point for environmental action and co-ordination within the United Nations System". The Governing Council of UNEP has defined this environmental action as encompassing a comprehensive, transsectorial approach to environmental problems which should deal not only with the consequences but also with the causes of environmental degradation.

The UNEP Governing Council has designated " Oceans" " among the priority areas in which activities are to be developed, and early meetings to the Governing Council endorsed a regional approach to the control of marine pollution and management of marine and coastal resources. Consequently, in 1974 the Regional Seas Programme of UNEP was initiated.

At present, in accordance with the decisions of the Governing Council, the Regional Seas Programme covers ten areas where regional action plans are operative or are under development,

among them is the Kuwait Action Plan .

The substantive aspect of any regional programme is outlined in an "action plan" which is formally adopted by an intergovernmental meeting of the Governments of a particular region before the programme enters an operational phase. In the preparatory phase leading to the adoption of the action plan, Governmentals are consulted through a series of meetings and missions about the scope and substance of an action plan suitable for their region. In addition, with the co-operation of appropriate global and regional organizations, reviews on the specific environmental problems of the region are prepared in order to assist the Governments in identifying the most urgent problems in the region and the corresponding priorities to be assigned to the various activities outlined in the action plan. UNEP co-ordinates directly, or in some regions indirectly through existing regional organizations, the preparations leading to the adoption of the action plan.

All action plans are structured in a similar way, although the specific activities for any region and dependent upon the needs and priorities of the region. An action plan usually includes the following components:

(a) Environmental assessment.
(b) Environmental legislation,
(c) Institutional arrangement
(e) Financial arrangements

It is essential to bear in mind that all components of regional programme are interdependent. Assessment activities identify the problems that need priority attention in the region. Legal agreements are negotiated to strengthen co-operation among States in managing the identified probles. They also provide an important tool for national policy makers to implement national control activities. Management activities, aimed at cotnrolling existing environmental problems and preventing the development of new ones, are one of the means by which states fulfil their treaty obligations.

Co-ordinated assessment activities then continue to assist Governments by providing scientific information by which to judge whether the legal agreements and management policies are effective.

After two years of preparatory activities, UNEP convened the Kuwait Regional Conference of Plenipoteniaries on the Protection and Development of the Marine Environmental and Coastal Areas in Kuwait from 15 to 23 April 1978. The Conference adopted the Action Plan for the protection and development of the marine environment and the coastal areas of Bahrain, Iran Iraq, Kuwait, Oman, Qatar, Saudi Arabia and United Arab Emirates together with the following two legal agreements:

(1) Kuwait Regional Convention for Co-operation on the Protection of the Marine Environment from Pollution; and

(2) Protocol concerning Regional Co-operation in Combating Pollution by Oil and other Harmful Substances in Cases of Emergency.

On 30 June, 1979 the legal agreements entered into force. The Government of Kuwait has been designated as the Depositary for the Convention and Protocol, The Regional Organization for the Protection of the Marine Environment was established in accordance with article XVI of the Convention, and it has assumed responsibility for the secretariat functions of the action plan, the Convention and Protocol. A list of contracting Parties is presented in the Table No.4. below

TABLE NO.4

Status as at 1 March 1983 of the Kuwait Regional Convention for Co-operation on the Protection of the Marine Environment from Pollution and its Protocol[a]

State	Convention	
	Signature	Ratification
Bahrain	24 April 1978	1 April 1979
Iran	24 April 1978	3 March 1980
Iraq	24 April 1978	4 February 1979
Kuwait	24 April 1978	7 November 1978
Oman	24 April 1978	20 March 1979
Qatar	24 April 1978	4 January 1979
Saudi Arabia	24 April 1978	26 December 1981
United Arab Emirates	24 April 1978	1 December 1979

[a] In accordance with article XXVII (c) of the Convention "any State which has ratified, accepted, approved or acceded to the present Convention shall be considered as having ratified, accepted, approved or acceded to the Protocol concerning Regional Co-operation in Combating Pollution by Oil and other Harmful Substances in Cases of Emergency".

KUWAIT REGIONAL CONVENTION FOR CO-OPERATION ON

THE PROTECTION OF THE MARINE ENVIRONMENT FROM POLLUTION

The Kuwait Convention consists of a preamble, 30 articles, and one Protocol.

The preamble defines the idea behind the Convention and the aims to be achieved by the States concerned Art. 1 :(a) defines the " Marine Pollution " as the introduction by man, directly or indirectly, of substances or energy into the marine environment resulting or likely to result in such deleterious effects as harm to living resources, hazards to human health, hindrance to marine activities including fishing, impairment of quality for use of sea-water and reduction of amenities.

The definitions derived from the definition of Marine Pollution accepted by the joint Group of Experts on the Scientific Aspects of Marine Pollution (GESAMP) (*)7

Art.2(a) defines the geographical area to which the Convention is applicable. This"Sea Area" comprises the international water area, or the high seas, as well as the territorial sea of the coastal states.

The sovereignity of a coastal state extends beyond its land territory and internal waters over an adjacent belt of a sea the so-called-Territorial Sea. In the Arabian Gulf the breadth of the Territorial Sea varies from three to twelve nautical miles from the base line. (See Table No.5).

While the provisions of this Convention is not apply to internal waters of the contracting States (Art. 2(b)), Art. 4.2 of the Protocol States that, for the purposes of dealing with a marine emergency, ports, harbours, estuaries, bays and lagoons may be treated as part of the Sea Area if the concerned contracting State so decides.

TABLE NO. 5

CLAIMS TO MARITIME ZONES BY THE GULF STATES

State	Territorial Sea	EEZ or EFZ	Continental Shelf	Other Maritime Zones
Bahrain	3			
Iran	12(1959)	50 EFZ (1973)		50 Pollution Control zones in the Gulf of Oman and to the outer limit of the continental shelf in the Arabian Gulf(1976)
Iraq	12 (1958)			
Kuwait	12 (1967)		-	
Oman	12 (1972)	200 EEZ (1981) 38 EFZ (1972)	CSC definition (1972)	50 Pollution control zone (1974)
Qatar	12 (1974)	EFZ corresponds to limits of continental shelf (1974)		
Saudi Arabia	12 (1958)	EFZ of unspecified area (1974)		18 contignos zones for security, navigation fiscal and health matters (1958)
United Arab Emirates	3-12 for Sharjah	EEZ of undefined Area (1980)		

The Kuwait Convention deals with all sources of Pollution, which causes pollution of Sea Area, without given a priority to any particular pollutant although pollution from tanker transport (from ships generaly) considered as the main sources of pollution in the Region. Table No.6 shows the high percentage of pollution from tanker transport and offshore operations, which is consistent with the high concentration of oil production and transportation activities in the Kuwait Action Plan Region $(*)_8$.

TABLE NO. 6

Total Estimate of Oil Pollution in the Kuwait Action Plan Region during 1979

Source	Estimate in Tonnes	Percentage of Total.
Natural Seeps	13,815	9.6
Offshore Production	32,162	22.4
Tanker Transport	82,032	57.1
Non-tanker Accidents	1,717	1.2
Coastal Refineries	1,347	0.9
Atmospheric Fall-out	396	0.3
Coastal Municipal wastes & Coastal Non-refinery wastes	4,911	3.4
Urban Run-off	2,456	1.7
River Run-off	4,909	3.4
TOTAL	143,745	100.0

Sources of pollution delt with in this Convention are as follow:-

(1) Pollution from ships (intentional and accidental),
(2) Pollution caused by dumping from ships and aircraft,
(3) Pollution from land-based sources,
(4) Pollution resulting from exploration and exploitation of the bed of the territorial sea and its subsoil and the continental Shelf,
(5) Pollution from other human activities (land reclamation suction dredging and coastal dredging).

Articles IV, V, VI, VII and VIII oblige the Gulf States to take appropriate measures to prevent, abate and combate pollution in the Sea Area caused by any of the afore mentioned source or sources of pollution.

It should be mentioned here that the Kuwait Convention refers in some of its articles to the applicable rules of international law which deal with prevention, abatment and combating of pollution, obliges the Contracting States to ensure effective compliance in the Sea Area with applicable international rules relating to the control of pollution from ships, including load-on-top, segregated ballast and crude oil washing procedures for tankers. (Art.IV); Without mentioning MARPOL 73/78 or any other international instrument by name. In addition Art. XIII (a) calls for bearing in mind internationally applicable rules and procedures concerning civil liability and compensation for oil pollution damages without naming any particular international convention such as CLC or the Fund Convention.

Furthermore, the measures taken by the Contracting States in conformity with applicable rules of international law, and those provided for in relevant international conventions considered as an obligation, which may rise difficulties in implementation of the Kuwait Convention for most of the Gulf States, have not ratified the existing international pollution Convention (*)9

This is why the Kuwait Action plan, in the very beginning, recommended that the States of the Region should ratify and implement the International Convention related to the protection of the marine environment such as :-

1 - 1954 International Convention for the Prevention of Pollution of the Sea by Oil, and its amendments;

2 - 1972 Convention on prevention of Marine Pollution by Dumping of Wastes and other Matters;

3 - 1973 International Convention for the Prevention of Pollution from ships as modified by Protocol of 1978 (*)10

One should recommend, additional to these three significant Conventions, the other relevant international instruments such as:-

- 1969 - International Convention relating to intervention on the High Sea in cases of Oil Pollution casualities.

- 1969 - International Convention on Civil Liability for Oil Pollution Damage.

- 1971 - International Convention on the Establishment of an International Fund for compensation for oil Pollution Damage.

It should be noted that the Kuwait Convention as yet-much less detailed. Art. VI simply provide that States parties are to " take all appropriate measures" to prevent and abate marine pollution from land-bases sources. (There is similar provision in the West African Convention- Art.7 of the same). It may be that in time protocols to give detailed effect to this general obligation will be elaborated, as has happened with the Mediterranean Convention, and in fact the action plan accompanying the Kuwait Convention does call for the elaboration of such a protocol.

In the same manner the Kuwait Conventions, unlike Baltic Convention, is much more general, and simply call on contracting parties to take all appropriate measures to prevent and reduce pollution caused by dumping and ensure effective compliance with the internationally agreed rules on dumping (*)$_{11}$

Article XXV of the Kuwait Convention provides two means for the settlement of disputes with regard to the interpretation or application of the Convention or its protocols. The traditional means such as negotiation, or any other peaceful means of the Contracting State's Choice. The Second means for the settlement of disputes between the Contracting States in case of the failure to solve the disputes, in accordance with the means provided for in paragraph (a), would be to submit the dispute to the Judicial Commission for settlement.

REGIONAL ORGANIZATION FOR THE PROTECTION OF THE MARINE ENVIRONMENT

The necessity for the implementation of the Kuwait Convention and the protocols the Regional Organization for the Protection of the Marine Environment (hereinafter referred to as ROPME) was established in accordance with Art. XVI of the Convention upon entry into force of the same in June,1979. The permanent headquarters of ROPME located in Kuwait.

The Organization consists of the following organs:-

(1) Council - comprised of all Contracting States;

(2) Secretariat - comprised of an Executive Secretary and personnel necessary to perform its functions.

(3) Judical Commission for the settlement of disputes.

(4) Marine Emergency Mutual Aid Centre - located in Bahrain (see chart 3)

The Council has the following functions:-

(i) To keep under review the implementation of the Convention and its protocols, and the Action Plan referred to in paragraph(e) of article I;

(ii) To review and evaluate the state of marine pollution and its effects on the Sea Area on the basis of reports provided by the Contracting States and the competent international or regional organizations;

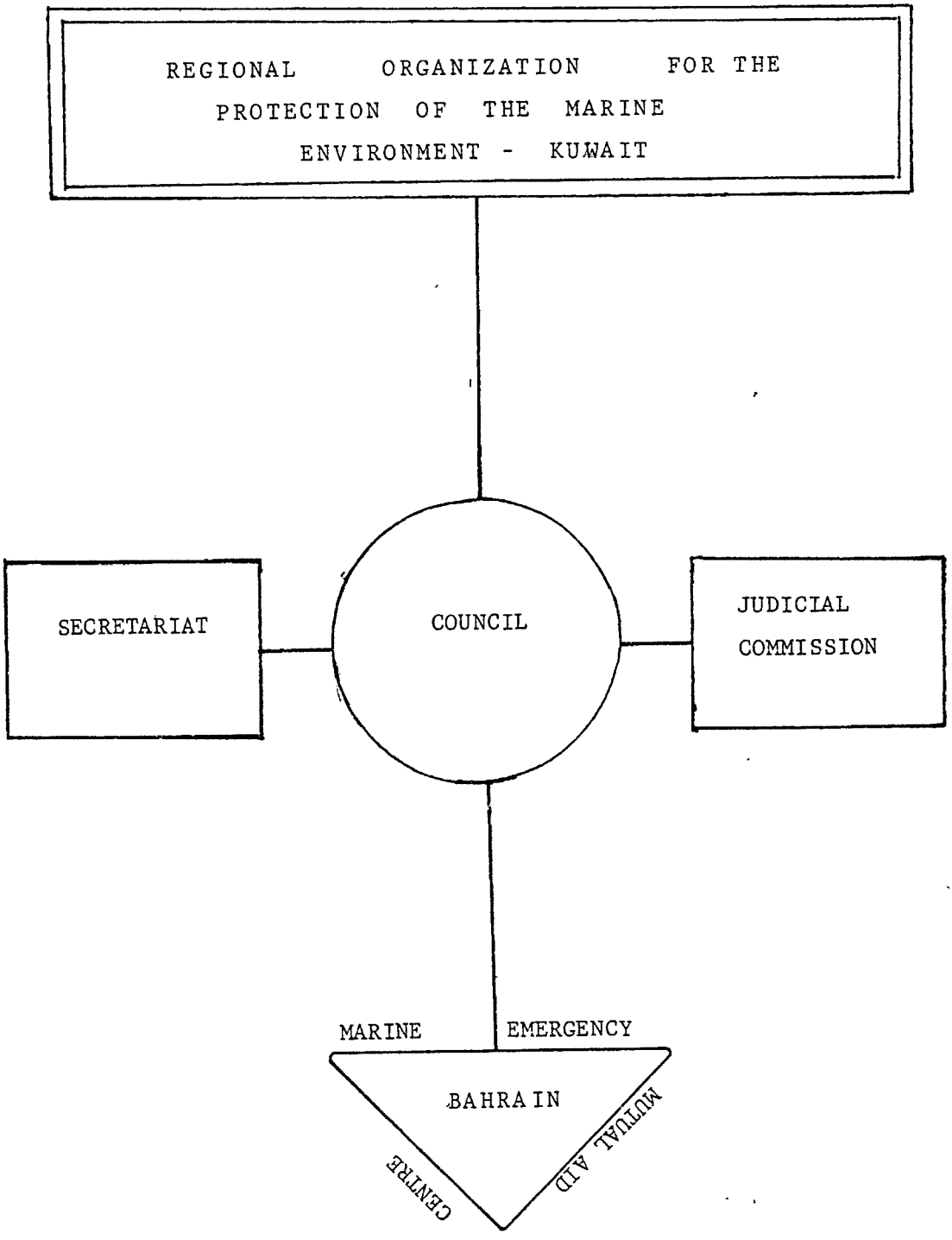
(iii) To adopt, review and amend as required in accordance with procedures established in article XXI, the annexes to the Convention and to its protocols;

(iv) To receive and to consider reports submitted by the Contracting States under articles IX and XXIII;

(v) To consider reports prepared by the Secretariat on questions relating to the Convention and to matters relevant to the administration of the Organization;

(vi) To make recommendations regarding the adoption of any additional

CHART 3


REGIONAL ORGANIZATION FOR THE PROTECTION OF THE MARINE ENVIRONMENT - KUWAIT
SECRETARIAT
COUNCIL
JUDICIAL COMMISSION
MARINE
EMERGENCY
BAHRAIN
MUTUAL AID
CENTRE

protocols or any amendments to the Convention or to its protocols in accordance with article XIX and XX;

(vii) To establish subsidiary bodies and ad hoc working groups as required to consider any matters related to the Convention and its protocols and annexes to the Conventions and its protocols;

(viii) To appoint an Executive Secretary and to make provision for the appointment by the Executive Secretary of such other personnel as may be necessary;

(ix) To review periodically the functions of the secretariat;

(x) To consider and to undertake any additional action that may be required for the achievement of the purposes of the Convention and its protocols. (Art. XVII(d)).

Art. XVIII of the Convention states the following functions of the Secretariat;

(i) To convene and to prepare the meetings of the Council and its subsidiary bodies and ad hoc working groups as referred to in article XVII, and conferences as referred to in articles XIX and XX;

(ii) To transmit to the Contracting States notifications, reports and other information received in accordance with articles IX and XXIII;

(iii) To consider enquiries by and information from the Contracting States and to consult with them on questions relating to the Convention and its protocols and annexes thereto;

(iv) To prepare reports on matters relating to the Convention and to the administration of the Organization.

(v) To establish, maintain and disseminate an up-to-date collection of national laws of all States concerned relevant to the protection of the marine environment.

(vi) To arrange, upon request, for the provision of technical assistance and advice for the drafting of appropriate national legislation for the effective implementation of the Convention and its protocol.

(vii) To arrange for training programmes in areas related to the implementation of the convention and its Protocols;

(viii) To carry out its assignments under the protocols to the Convention;

(ix) To perform such other functions as may be assigned to it by the Council for the implementation of the Convention and its protocols.

The Executive Secretary shall be the chief administrative official of the organization .

In order to avoid any obstacle towards reaching an agreement between the Gulf States attending the Kuwait Conference, the composition, function and rules of procedure of the Judicial Commission as a Permanent Organ of the ROPME, was left to be decided upon at the first meeting of the Council. (Art. XVI (b) (iii)).

In addition, the Protocol concerning Regional Co-operation in Combating Pollution by Oil and other Harmful Substances in cases of Emergency out lined, in detail, the objectives and functions for the establishment of a Regional Centre i.e. the Marine Emergency Mutual Aid Centre (hereinafter referred to as a MEMAC), with two immediate objectives;

(i) To strengthen the capacities of the Contracting States and to facilitate co-operation among them in order to combat pollution by oil and other harmful substances in cases of Marine Emergencies.

(ii) To assist Contracting States, in the development of their own national capabilities to combat pollution by oil and other harmful substances and to co-ordinate and facilitate the exchange of information, technological co-operation and training.

Further more, the same Article, paragraph(3), States the following functions of MEMAC:-

(a) To collect and disseminate to the Contracting States information concerning matters covered by this Protocol, including;

(i) Laws, regulations and information concerning appropriate authorities of the Contracting States and Marine Emergency contingency plans referred to in article V of this Protocol;

(ii) Information concerning methods, techniques and research relating to marine emergency response referred to in article VI of this Protocol; and

(iii) List of experts, equipment and materials available for marine emergency responses by the Contracting States;

(b) To assist the Contracting States, as requested;

(i) In the preparation of laws and regulations concerning matters covered by this Protocol and in the establishment of appropriate authorities;

(ii) In the preparation of marine emergency contingency plans;

(iii) In the establishment of procedures under which personnel, equipment and materials involved in marine emergency responses may be expeditiously transported into, out of, and through their respective countries;

(iv) In the transmission of reports concerning marine emergencies; and

(v) In promoting and developing training programmes for combating pollution;

(c) To co-ordinate training programmes for combating pollution and prepare comprehensive anti-pollution manuals;

(d) To develop and maintain a communication/ information system appropriate to the needs of the Contracting States and the centre for the prompt exchange of information concerning marine emergencies required by this Protocol;

(e) To prepare inventories of the available personnel, material, vessels, aircraft, and other specialized equipment for marine emergency responses;

(f) To establish and maintain liaison with competent regional and international organizations, particularly the Inter-Governmental Maritime Consultative Organization, for the purposes of obtaining and exchanging scientific and technological information and data, particularly in regard of any new innovation which may assist the Centre in the performance of its functions;

(g) To prepare periodic reports on marine emergencies for submission to the council; and

(h) To perform any other functions assigned to it either by this Protocol or by the Council.

However, MEMAC may fulfil additional functions necessary for initiating operations to combat pollution by oil and other harmful substances on a regional level, when authorized by the Council (Art. III.4).

MEMAC was established on 16th March 1983, on the premises offered by the host country-State of Bahrain to implement its programme. However, it should be mentioned that there was a consensus among the experts that MEMAC should be a relatively autonomous operation, especially since its purpose will be to deal with emergency situations. It was also considered that the Director of MEMAC should have a fairly free hand in order to respond quickly and efficiently to a given situation, since flexibility and independence are essential if centre such as this is really going to be effective (*)$_{12}$

THE RECENT ACTIVITIES OF THE ROPME

From the very beginning the Interim Secretariat was officially inaugurated in Kuwait on 7th July 1980, Even before that (in November 1979) experts from the Kuwait Action Plan Countries, UN Related Agencies and International Organizations, approved seventeen specific projects devided them into thematic groups and assigned them by order of priority so that work on a number of them could be started immediately.

The first meeting of the Council of the ROPME, took place in Kuwait from 21-23 April, 1981, during which the following were among important decisions taken:

- The Council established an Executive Committee, comprised of the ministers of health of Bahrain, Iraq, Kuwait and the Ambassador of Iran to the State of Kuwait, to supervise the implementation of the Action plan;

- An appropriate budget was allocated by the Council for the implementation of the Action Plane Programme.(*)13

- The Council established a Scientific Advisory Committee composed of scientists from the Contracting States to assist the Executive Secretary in recruiting and providing technical and scientific advice on the implementation of the Action Plan Programme.

The second meeting of the Council was held in Kuwait from 6-7 November 1982. The ROPME Council agreed as a first principle that adequate reception facilities should be provided at all oil terminals, ports, and repair ports.

The council decided to initiate technical studies.and cost-benefit analyses to facilitate ratification of the international conventions (short term studies) and to address other related environmental concerns (long term studies), assigning the highest priority to the dirty ballast problems.

Beyond looking at the provision of receiption facilities to meet local needs these studies will also examine the case for constructing one or more " Strategically located " receiption facilities dedicated to central collection of oily ballast.

On a sterner note, experts will also examine the feasibility of restricting access to the Region for those tankers, which are not fitted with segregated ballast or clean ballast tanks.

Recommendations have been adopted by ROPME to step up its fight against marine pollution including a call to members which have not yet ratified the MARPOL 73/78 (all contracting States except the Sultanat of Oman) to accept the Convention as soon as possible. This would fulfil the obligation under Art. IV of the Kuwait Convention to applicable international rules.

Another area of concern is that there should be enough qualified staff in each administration of MARPOL provisions. Skilled people are needed for duties that include surveillance, inspection, and enforcement procedures.

The ROPME Council also believes that while the MARPOL definition of clean ballast should be accepted initially, scientific evidence may point to the need for tougher standards for ballast water when regional environmental factors are taken into account.

Accordingly, it has been recommended that ROPME (MEMAC) should develop a long - term work plan of the priority tasks needed to help decision-making on improved criteria and standards for marine discharge. Such a work plan should include:-

- A continuous investigation and evaluation of shipping traffic patterns;
- The development of a surveillance plan for the whole Region;
- The revising of standards in the light of the results of monitoring and surveillance programmes;
- The development of check-lists for use by surveyors when enforcing port state control.

Furthermore, the ROPME Council recommended that in prallel with the other work towards ratification of MARPOL-73/78, preparation of national legislation to give effect to the Convention be commenced.

It was also recommended by the Council that ROPME should establish close contact with IMO with a view to entering into formal consultative status with the organization (*)$_{14}$

Furthermore, the third meeting for the Council which was an extra ordinary meeting to deal with the oil spill from the Iranian Nowruz Oil Field, and how to find a way to overcome this very important and delicate problem. This meeting took place in Kuwait between the 6th and 15th of April, 1983, here we will not concern ourselves with the details of the events, which we have already in the first chapter gave a fair discussions, but still we have to mention this particular meeting, because it considers as a part of the efforts of the ROPME to take a collective action in solving the problem at hand.

Before the afore-mentioned meeting, there was another meeting for the technical expertise, members of ROPME; that took place in Bahrain in the first week of April, to set up the Regional containgency Plan for combating the oil leakage, or the so called "oil spill". The expertise recommendation was the importance of closing up the defected and burning oil wells immediately as a first step, then one can proceed to combat the oil spills in the Gulf Area to preserve the marine resources, by removing the oil from the Gulf waters, which might affects the water reaching for the distilation plants, and other industrial activities on the Gulf's shores.

On the 6th of April there was the extra ordinary meetings of the Council to concur the main defficulties for the sake of fulfilling the Regional contingency Plan, which was recommended by the technical expertise, to reach to a Political concordance for the assurance of the safety of the marine military units, which should be responsible for pluging the defected Nowruz Oil Field as well as combating the oil spill.

This meeting has been suspended to give the time necessary to Iraq and Iran for consultation with their respective Government. Eventhough, there was an informal agreement on announcing the Kuwait Memordandum concerns the emergency event, no agreement was reached to assure the safety to the non-military marine units which was clearly mentioned in the Second and the Third provisions of the Memorandum.

The Second Session of the meeting was held on the 26th April, to discuss the final Act, which included an introduction which gave a short account of the chain of events since the call for the first meeting, to discuss the oil spill from the above mentioned oil field, and what action should be taken to overcome the environmental impacts. In addition, the final act comprised of six main provisions for the Action plan that should be followed by states parties to the Kuwait Convention by ROPME as well, in the case that no full agreement could be reached to plug the defected wells and compating the Oil Pollution. This partial agreement may consider as the best possible sollution in the abnormal situation in the Gulf Area and especially the Iraq-Iran War, which not fulfil the ROPME ambitious. (*)[15]

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FOOTNOTES

1. Dr. Badria Al-Awadhi - Legal Regime to Combat Oil Spill from the Nowruz Oil - Field in the Arabian Gulf. Kuwait, July 1983, p.13 (Arabic)

2. Dr. Badria Al-Awadhi - The protection of the Sea Environment in the Gulf Region.- Institute of Public International Law and International Relations of Thessaloniki - 1982. p.435.

3. For more analyze details of these two Kuwaiti Laws See Dr.Badria Al-Awadhi -S upra Ps. 435, 451.

4. For more details on delimitation of the boundries in the Arabian Gulf, See - The Middle Eastern States and the Law of the Sea - by Ali A. El- Hakim, North America : Syracuse University Press, 1982.

5. Dr. S.H. Amin - The Gulf States and the Control of Marine Pollution: Regional Arrangements and National Legislation - Lloyd's Maritime and Commercial Law - Quarterly - Feb. 1982. p. 112, 113.

6. See - Al Qabass News Paper - 30.8.1983 - Kuwait

7. For more details See - G.Kullenberg - Categorization of Noxious Liquid Substances, and also for the same author- The Health of the Oceans and the Need for its Monitoring. First International Symposium on Integrated Global Ocean Monitoring - Tallin, USSR, 3-8 October, 1983.

8. For more details on the estimation of oil pollution in the Gulf Area See R. Golob and E.Brus - Statistical Analysis of Oil Pollution in the Kuwait Action Plan Region and the Implecations of selected World-Wide Oil Spills to the Region - UNEP Regional Sea Reports and Studies No.44 - 1984.

9. Dr. Badria Al-Awadhi , supra p. 455 .

10. UNEP Regional Sea Reports and Studies No.35 on p.8.

11. The Baltic Convention takes a rather different and much stricter approach to dumping. Article 9 prohibits all damping, except of dredged spoils, and even this is prohibited if the wastes contain significant quantities of certain listed noxious substances. Where such dumping is permitted, a special prior permit must be obtained.

For more details Sea, R.R. Churchill and A.V. Lowe - The Law of the Sea - Manchester University Press U.K. 1983 on p.239.

12. See, A.Al-Zaidan, Kuwait Action Plan - Overall concept and progress Made, UNEP Regional Seas Reports and Studies No.44 on p.6

13. At the 1978 Kuwait Regional Conference was decided that the Regional Trust Fund be financed for the initial two and one-half year period by proportional contributions from the Governments to be assessed as follows:

Country Name.	%	U.S. $
Bahrain	2.00	116,400
Iran	28.04	1,631,928
Iraq	12.66	736,812
Kuwait	15.46	899,772
Oman	2.00	116,400
Qatar	8.93	519,726
Saudi Arabia	19.18	1,116,276
United Arab Emirates	11.73	682,686
Sub Total.		5,820,000
UNEP		500,000
Total.		6,320,000

See for more details on financial arrangements, Final Act of the Kuwait Regional Conference of Plenipotentiaries on the Protection and Development of the Marine Environment and the Coastal Areas, Kuwait, 15-23 April, 1978.

14. See, The Recommendations on Receiption Facilities as Approved by the Ministerial Council of ROPME at their Second Meeting Held in Kuwait from 6-7 November, 1982 and also See ROPME lays stress on shore facilities - Lloyd's List, Wed. March 14, 1984

15. For more details and the text of Kuwait Memorandom See, Dr. B.Al-Awadhi - Supra, in Arabic.

C O N C L U S I O N

As previously stated, the pollution problem is a relatively recent one for the Arabian Gulf Societies yet it is a current problem from which the industrialized societies in general suffered and still continue to do so. This problem was aggrivated in the Arabian Gulf region with time as its seriousness accelerated with the increase in the levels of development in industry and construction and with the increase of demand for the Gulf's Oil. Accordingly, the marine environment suffered in two respects. On the one hand it became one of the victims of the industrial projects, which were generally coastal and in states all of which are situated on a shallow semi-enclosed sea. On the other hand, oil carriers and vessels navigating the Gulf were discharging their wastes and bilges in the warm waters of the Arabian Gulf for along period of time without any control and without the best consideration of effects of such acts on the marine environment. In addition, the Iran-Iraq war added another presective to the pollution problem and "added wood to the fire". In face of the aforesaid situation, which no one can envy us for goming the response too little too late.

Accordingly, with this study, we came to the following findings:-

(1) Among the eight GulfStates, only three have national laws designed specially to protect the marine environment (Kuwait, Oman and Iran) noting that the Kuwaiti legislation is an old one which is not in compatability with the new developments in the field of protection of the marine environment;

(2) Among the relevant states, there are three states which did not ratify yet any international convention in respect of the protection of the marine environment and pollution prevention, which two of such states ratified only one convention namely (OIL POL) of six relevant conventions subject of this study- yet the 1972 London Dumping Convention was ratified by only two states, namely Sultanat of Oman and United Arab Emirates;

(3) At the beginning of this decade, most of the relevant states started establishing a specialized council for the protection of the environment.

(4) Except for the Sultanat of Oman, there are no Ministries in the said states for the environment which would take care of environment related issues as the Ministry of Health in the same states assumes such a role,

(5) Many of such states do not have any contengency plans, which was evident in the event of the Iranian " Nowruz " oil well;

(6) All such states have an accute shortage of competant personal of nationals in the field of environmental portection and pollution prevention.

In addition, with respect to the Kuwait Convention, we found that what blocks the implementation of the same and the activness of the ROPME to assume its real role in excuting its responsibilities is the following:

(1) The continuation of the Iran-Iraq War and the increase of Military escalation and the turn of political complexities created by the same, to the worse ..

(2) The intentional delay in establishing the judicial commission for the settlement of disputes whose composition, terms of reference and rules of procedure should have been established at the first meeting of the Council (Art. XVI (b) (iii) of the Convention).

(3) The delay in issuing additional protocols to clearify the provisions of the Kuwait Convention some of which are characterized by their generalities;

(4) Not resolving some of the administrative issues and completing the administrative structure of the ROPME. and

(5) Restricting the manoeuverability of the MEMAC and not availing it the necessary autonomousness to discharge its duties, in addition to not delegate it to initiate operations to combat pollution by oil and other harmful substances at the regional level. (Art.III.2.(c). of the protocol)

Accordingly, and convinced that the regional co-operation in the field of protection of the marine environment, embodied in the Kuwait Convention, is a wholly new attempt which was born a few years ago and confronted by the harsh Gulf War in its infancy, we foresee the way out of this dilemma in the following:

(1) giving that one can not predict the result of this stiff war and untill it winds down, the states which are not directly envolved therein should strive through the Organization and through its bilateral cooperation to reduce the political impact and consequences of the war on the ROPME activities in particular, and on the regional co-operation in general, steming from the recognition that the problem of marine pollution does not have geographical or political boundries as if it exists, it would reach all with no exceptions;

(2) Speeding the establishment of the judicial commission and specifying its terms of reference and its internal rules of procedures;

(3) Speeding up the resolution of the administrative issues and completing the administrative structure of the Organization;

(4) Amending the convention and its protocol and issuing additional protocols as may be needed;

(5) Giving the MEMAC the necessary freedom of manoeuvrebility and autonomusness and empowering it to initiate pollution combating operations on the regional level;

(6) Emphasising the necessity for convening ordinary and extra-ordinary meetings of the origanization's council in accordance with provisions of the convention, to follow up the latest developments;

(7) Activating the efforts to implement the recommendations on reception facilities as approved by the council of ROPME at their second meeting held in Kuwait from 6-7 November, 1982.

(8) Resolving the pending financial problems.

Furthermore, in respect to IMO and the international conventions we noticed the lack of response of the relevant states to the efforts of this organization in the field of maritime safety in general and that of the protection of marine environment and the prevention of pollution in particular. The aforesaid is monifisted in the non-ratification of the same states to most of the international conventions adopted under the auspices of the same organization, the non active envolvement of such states in the activities of the said organization and the non attendance of most of these states of the MEPC meetings. Accordingly, we recommend the following:-

(1) Strengthening the relationship of the said states with IMO by attending the ordinary and extra-ordinary meetings of all committess and working groups of the same especially the Assembly Sessions and the Council Sessions for those countries members therein (Kuwait and Saudi Arabia);

(2) Requisition by the ROPME for a consultative status in IMO in accordance with the Council's recommendations in its second meeting, and thereafter attending the meetings of the IMO especially those of the MEPC;

(3) Ratification of the rest of the states to OIL POL as a first step, to be followed by serious consultations for the joint ratification of MARPOL;

(4) Immediate ratification of the Intervention Convention. However in respect to the U.N. Convention on the Law of the Sea other studies are needed thereof as the same is not concerned with the problem of marine pollution only.

(5) Ratifification of the CLC and the FUND Convention, with clear intention to include some important areas which have not atracted the attention of the rule of liability such as, offshore installation,pipelines, oil escaping from dry cargo ships and tankers not carrying oil in bulk as a cargo and others.

Finally, on the national level, it is necessary, in our view, to complete the pending national legislations concerning protection of the environment, creating a new ministry to deal with environmental issues in addition to finalizing the national contengency plans and concentrating on producing a competent and qualified national cadars therein.

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